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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

SHELDON HUGER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-001333

APPENDIX

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

STATE OF SOUTH CAROLINA)

vs.)

SHELDON HUGER)

Defendant)

COURT OF GENERAL SESSIONS

DOCKET NO. 2016-GS-10-4915

TRANSCRIPT OF RECORD

February 1, 2017

Charleston, South Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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PROCEEDINGS

1
2 THE COURT: Okay. Are we ready to go forward with
3 the hearings?

4 MS. PROCTOR: One moment, Your Honor.

5 [Whereupon, Ms. Proctor confers with her client]

6 MR. HUGER: Judge, I would like to -- excuse me?

7 MS. PROCTOR: Your Honor, I think he would ---

8 THE COURT: --- you don't have to stand up; I
9 appreciate it. Let me explain why. Your lawyers have to
10 -- I assume you're not a lawyer, is that correct?

11 MR. HUGER: No, I'm not a lawyer.

12 THE COURT: Okay. Your lawyers have to stand up
13 because they're officers of the court and out of due
14 respect for the process they have to stand. You're not;
15 you're a citizen. You're entitled to sit if you want to.
16 That's fine with me. It doesn't offend me in the
17 slightest. Whatever you are comfortable doing is fine
18 with me.

19 MR. HUGER: Well, I just wanted to show you the
20 respect since you said it you know.

21 THE COURT: Well, you don't have to. I don't think
22 sitting is disrespectful; I think it's just comfortable.

23 MR. HUGER: Well, my thing is at this point you
24 know I don't know everything there is to know about the
25 law and I don't try to act like I do.

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1 THE COURT: Yes, sir.

2 MR. HUGER: But the thing is that I'm not happy
3 with my public defenders.

4 THE COURT: Okay.

5 MR. HUGER: And at this point I think they're
6 saying the trial is getting ready to start and I can't
7 hire my own attorney?

8 THE COURT: You can hire your own attorney. You
9 can -- I wouldn't advise you to do this but I have to
10 recognize your right, and I've had to do it twice that I
11 can think of in serious cases of this nature. And I've
12 tried cases with pro se defendants and the outcomes
13 weren't good. Whether that had anything to do with --
14 that may have just been the facts but they're in jail now
15 and will be for as long as you and I are around.

16 But you can represent yourself. The Supreme Court
17 has said you have that fundamental right. So your
18 options today you can fire your lawyers if you want to
19 but we're prepared to go forward with some hearings which
20 will become part of this case. And this case is set for
21 trial to start on Monday I think.

22 MR. CORVEY: I believe its Tuesday.

23 THE COURT: Excuse me?

24 MR. CORVEY: Tuesday.

25 THE COURT: Tuesday; I beg your pardon. And if you

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1 can get a lawyer between now and Tuesday, good. You can
2 have a lawyer, no problem. You have lawyers and that's
3 why I would suggest that you not fire your lawyers. You
4 know before I was a judge I was a lawyer for 21 years.
5 And I handled criminal cases too. And I had the pleasure
6 of representing persons just like you accused of things.
7 And I can promise you I was retained. And we had many
8 times that my client didn't like what I was telling them.
9 And my statement to them was you didn't hire me to be a
10 yes person. You hired me to tell you what I honestly
11 believe.

12 And because we have and you have with your lawyers
13 the greatest thing that protects this whole process as
14 far as I'm concerned; and that is attorney client
15 privilege because you can tell them things and they can
16 tell you things and nobody unless you okay it they can't
17 tell me a thing about it because it's totally protected
18 by that.

19 And you have that luxury of being able for instance
20 -- and I'm not suggesting this -- you may say you know
21 what? I'm guilty as sin of this thing but I need you to
22 get me a deal man; the best you can do for me. And I get
23 that. And I'd come back and they would say that's not a
24 good deal. And I said well I understand that. It's the
25 best deal I can get for you. Now, can somebody else get

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1 a better deal? I don't know. We've got a President that
2 says he's the best deal maker in the world. Whether he
3 is or he isn't I don't know. There are some deals that
4 since he had to declare bankruptcy a couple of times I
5 guess they weren't such good deals. But I'm not going to
6 get into that I'll just tell you this. The time for the
7 deal making is really about over because what -- and the
8 reason I say that is quite honestly Mr. Huger is this.
9 You're not entitled to a deal. No defendant is entitled
10 to a deal. They can make an offer but that doesn't mean
11 you're entitled to that.

12 What you're entitled to and that's what I'm here to
13 do is to give you a fair determination by the process and
14 that is you know as your lawyers have told you and I will
15 tell you this. I tell juries this every single time I
16 try a criminal case. I come down before anybody says a
17 word before your lawyers get to speak and I go through
18 the process and I tell them this.

19 Unlike a civil -- the format is the same in a civil
20 court or a criminal court. But there are two big
21 differences, major differences. And one of them is in a
22 civil case sometimes a defendant has to prove certain
23 things. Not so here. You don't have to prove one thing.
24 You don't have to present any evidence. You don't have
25 to say a word and I tell them that because a jury's

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1 verdict of guilty or not guilty -- everybody gets hung up
2 with innocent. Well innocence hasn't really got anything
3 to do with this process. The question is can they prove
4 you guilty beyond a reasonable doubt. And that's the
5 second point.

6 In a civil case the burden is typically a
7 probability standard. Not here. It's all -- you've got
8 to be firmly convinced to find that the State has
9 established every single element of each crime. And you
10 know I've seen them, I've seen people who I think
11 probably did it but the State didn't prove them guilty
12 because the jury said nope, not guilty. And that's what
13 it means. Not guilty doesn't mean they're innocent. It
14 means the State wasn't able to meet its burden of proof.

15 Now you're entitled to do what you want. You're
16 entitled to hire a lawyer anytime. The problem you're
17 going to have though in a private sector I think is I'll
18 tell you this. You and I may have the best rapport
19 initially with our initial conference but no way would I
20 get myself in that situation or put you in that situation
21 because you may disagree with your lawyers.

22 I'm going to tell you this if there is any lawyer
23 more passionate than Ms. Van Pala I haven't met her. Now
24 we don't always agree on some things but there is no
25 question about her passion. Now has she had the

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1 experience that Ms. Proctor has? No, because she hasn't
2 lived that long. But she's got the same qualifications.
3 And I tell my law clerks this when I hire them. We're
4 equal. The only difference is I've been blessed to live
5 on the earth a little bit longer than they have. And
6 I've been doing this for a little bit longer than they
7 have but that doesn't mean that they aren't intelligent.
8 That doesn't mean that they don't know the law.

9 But this lady Ms. Proctor I've worked with her since
10 I started this job in 1994. There isn't a soul in this
11 state that has more experience in this area than Ms.
12 Proctor does. So I understand you may not agree with
13 them. That's fine, that's okay and you're entitled to
14 disagree. But they have a duty to tell you what they
15 firmly believe and then it's your call.

16 But from the standpoint of getting a lawyer you
17 absolutely have that right but your time is kind of on
18 the edge because we're going to take up some things now.
19 I'd suggest that you not make that call with them until
20 after we have this hearing because they can help you with
21 the hearing.

22 With respect to deadlines and I know those are
23 things that are important. It's important for you, it's
24 important for the State and it's important for why people
25 do things. And I understand that. As I said I was a

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1 lawyer. Let me share this story with you because it was
2 a learning experience for me as a young lawyer. There
3 was a civil case and it was tried in the old court house
4 before Hugo. And we had a motion much like we do in
5 here. And I made a motion that basically kind of gutted
6 it. I was defending the case and the plaintiff brought a
7 suit against my client. And it kind of just cut it to
8 pieces.

9 So when we finished I'd made an offer to settle the
10 case long before. And he came in and said okay, I'll
11 take your offer. My response was its gone; it's not on
12 the table. The older lawyer that was sitting there said
13 let me talk to you. If you believe that it was a good
14 offer then it's a good offer now and you ought to return
15 it. That was good advice for me because it was a lot
16 less than what he wanted but it was what I was willing to
17 do initially.

18 And the same is true when the State makes an offer.
19 As I said they aren't obligated to make it. But if they
20 want to say you know what if I have to go to trial -- and
21 if I had to go to trial that offer would have never been
22 made. Zero; no chance of that. But the guy I basically
23 had him in a situation. Sometimes that applies here. I
24 don't know. The only thing I know about the facts of
25 this case I gleaned from your statements that I've

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1 reviewed and that's all I know about it. And I think the
2 statement is interesting and there are some things in it
3 that are good for you and things in it that are not so
4 good for you. But that's not for me to say because I'd
5 be practicing law and I can't do that anymore because I
6 took this job.

7 But anyway we're going to go forward with it. But
8 if there is a deadline that by going forward with it you
9 lose a position that's just the way it is. That's just
10 the way it works. And it's not just you; that applies to
11 anybody. That's one of the things -- and the reason I
12 want to get this and it leads me to it; it's a nice segue
13 into this.

14 One of the things you find when you -- one of the
15 things that I do as a judge is I hear post conviction
16 reliefs. And you're probably aware of what those are but
17 that's when you can complain about your lawyers and if
18 they made some mistakes then the court might can give you
19 a new trial on everything. But that's at a later date.
20 That's down the road.

21 But one of the problems you have at least for me as
22 a judge and trying to be fair and I said what I said
23 about the judge that has been nominated because I guess I
24 have to confess I'm a little bias having represented
25 people like you I want to have an opportunity where y'all

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1 have the best deal you can. But I tried a case one time
2 when I was convinced the defendant didn't know about it
3 and didn't know about the deal. But I couldn't because
4 they hadn't made the decision. There has been a recent
5 decision now that says you have to know about the deal.
6 And if you don't know about the deal, that may give you a
7 chance to come back and try it again.

8 At that time when this happened there wasn't any
9 such law. I felt like that was unfair but he wasn't
10 entitled to the deal so I had to deny his post conviction
11 relief although part of me just wanted to help that young
12 man because I thought you deserved a break man; you
13 really did. But there wasn't anything I could do for him
14 because the law said I had to do it.

15 The same is true here. I know of some things
16 because we've had a conference about some offers back and
17 forth. I understand that. I don't know anything about
18 any deadlines. That's something between you, your
19 lawyers and the State. But I will tell you this once
20 it's gone it's gone. And even though I may have thought
21 you know what? That wasn't such a bad deal. I'm no
22 longer bound by that so please understand that.

23 But anyway we're ready to roll but to answer your
24 question yes, you can fire them. I wouldn't suggest that
25 you do that now but if you want a minute to think on that

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1 and let me know if you want to handle this yourself
2 that's fine because you have the right to do that.

3 MR. HUGER: And if I can, can I say something?

4 THE COURT: Sure.

5 MR. HUGER: I don't mean to take up your time.

6 THE COURT: Let me stop you there please. And I
7 appreciate when people tell me that. And I don't mean
8 this flippantly. I mean this as sincerely as I possibly
9 can. And I pray -- I've been doing this for 23 years now
10 being a judge and if I'm blessed to do this five more
11 years -- well, I can't I'm going to have to retire in
12 three. But I pray that the last day I do this job I
13 never, ever lose sight of what I'm about to say to you.

14 Don't you apologize to me for the time involved.
15 That's what I'm here for. That's what I ran for this job
16 for to give you as much time as you need. You don't need
17 to apologize. That's what I'm here to do. And I meant
18 what I said. I represent you. I represent everybody in
19 this courtroom. This is the public's courtroom and I ran
20 to be a public servant as a judge, so don't you
21 apologize. But please, I'll be happy to hear from you.

22 MR. HUGER: I believe that my public defender Ms.
23 Lorelle Proctor is very smart. I know from listening to
24 other people talk about her. I've listened to her in my
25 case. She is very intelligent and her associate is too.

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1 And I believe that they are trying to do the best that
2 they can for me. I believe that. I just feel that it --
3 I shouldn't be the one to say it because I know I've
4 lived a bad life and I deserve punishment for what I've
5 done. But I just think that sometimes what they are
6 trying to give me is a little excessive.

7 THE COURT: Okay. First of all let me tell you
8 this so we're clear about something -- I want to be clear
9 about it when you say they Ms. Proctor doesn't have any
10 control over that.

11 MR. HUGER: It's the State.

12 THE COURT: It's the State. And the State as I
13 said from the start they don't have an obligation to give
14 you any benefit; none. And the real question here, and
15 this is a call, there has been some discussion about one
16 way to resolve this that could be done. And you can do
17 that anytime and that is -- and I'm not suggesting you
18 want to admit your guilt to anything because as I've said
19 you're innocent as far as I'm concerned.

20 And I mean that; you're innocent until the State
21 convinces me that you're guilty beyond a reasonable doubt
22 because people who are charged that doesn't change that
23 status. They didn't do anything, okay? That's the way
24 the Constitution says we have to look at that and I
25 believe that with every fiber in my body. But if you

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1 choose to say you know what? I'm guilty of an offense
2 you have that right anytime. The State doesn't get to
3 make the call if you want to say I'm guilty. But what --
4 but sometimes there are factors that enter in that that
5 guilt while it doesn't do anything to that charge it
6 triggers another thing and that other thing has serious
7 consequences. And in your case as you know you've been
8 noticed with life without parole. We've talked about
9 that.

10 MR. HUGER: Yes, sir.

11 THE COURT: Well, the problem is that's the problem
12 and that's going to be my call if you were -- for
13 instance, and I'm not suggesting you're going to do this
14 or want to do this. But if you were to plead to one of
15 the charges and that charge is a serious offense by its
16 designation then the jury doesn't have to convict you to
17 trigger that. Once you get that one then I have to make
18 the call as to whether or not life without parole whether
19 or not the law has been met because if it's met nobody
20 gets to pick and choose.

21 The legislature made that decision. It's automatic.
22 There is no -- I can't say well, you know that isn't fair
23 or I'm going to give him only 40 years or 20 years. I
24 don't have that option. The only thing a judge can write
25 is life without parole. That's it. And in some ways you

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1 said you've done some things in the past and that's fine.
2 You know what? In my opinion you've served your time for
3 those and you've finished. You really ought to be back
4 to square one where you're like everybody else. But
5 that's a perfect society and a perfect world and we know
6 we don't live in that.

7 Unfortunately, the reality it is what it is. And
8 I'm sorry for that stigma. But where it does come into
9 play is where you have these crimes that the legislature
10 designates trigger other things happening. But anyhow, I
11 hear you and I understand that. But they don't have to
12 do anything and if they've offered you anything then
13 they've been kind of -- I think that shows reasonableness
14 on the State's part to be honest with you because they
15 really don't have to. So anyway, whatever. Are we ready
16 to go?

17 MS. PROCTOR: Just one minute.

18 THE COURT: Y'all talk if you want to.

19 [Whereupon, Ms. Proctor and Ms. Van Pala confer with
20 their client]

21 MS. PROCTOR: Your Honor, at this time, and these
22 are just a few of our little housekeeping items ---

23 THE COURT: --- sure, absolutely.

24 MS. PROCTOR: We would ask that the witnesses be
25 sequestered. And I know that we will be doing a Jackson

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1 v Denno hearing so we would just ask that the witnesses
2 be sequestered.

3 THE COURT: Sure. The motion for sequestration
4 I'll do that. You're certainly -- the State is entitled
5 to have ---

6 MR. CORVEY: --- no objection to that, Judge.

7 THE COURT: I didn't think you would. You're
8 entitled to have your investigating officer. Obviously,
9 if there is a victim part they have the right to be
10 present during the proceedings. But other than that all
11 other fact witnesses will be sequestered, okay. The
12 motion is granted.

13 MS. PROCTOR: Thank you, Your Honor. We'd also
14 make a motion that bench conferences are on the record.
15 And I know in this courtroom -- and I don't know if we
16 will be in this courtroom or not.

17 THE COURT: Let me tell you my practice Ms. Proctor
18 of what I typically do. I will put on the record if we
19 have one -- and I don't have any problem doing it. My
20 problem is I'd rather if there is something that needs to
21 be placed on the record we excuse the jury. If we have a
22 bench conference I will allow you an opportunity to state
23 fully your positions at the appropriate time. For
24 instance if I rule on an objection just know that I will
25 afford you an opportunity if you wanted to make further

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1 argument I'll be happy to do that. But anything -- if
2 you feel there is an extensive one I just ask both sides
3 to say Your Honor at this point there is a matter that we
4 need to take up out of the presence of the jury.

5 MS. PROCTOR: Thank you, Your Honor. And also I
6 think at this time if we could just go over his prior
7 convictions should he testify.

8 THE COURT: Sure. Absolutely.

9 MR. CORVEY: Judge, I show his prior record as a
10 1992 conviction for a common law robbery in North
11 Carolina.

12 THE COURT: Okay.

13 MR. CORVEY: A 1999 conviction for breaking and
14 entering larceny out of North Carolina.

15 THE COURT: Okay.

16 MR. CORVEY: A 2000 conviction for felony larceny
17 out of North Carolina, 2004 convictions for assault and
18 battery with intent to kill and grand larceny out of
19 South Carolina, and a 2015 convictions for aggravated
20 battery and false imprisonment out of Georgia.

21 THE COURT: Okay. What crimes -- and you say want
22 them you mean for purposes of impeachment, is that what
23 you're asking me?

24 MS. PROCTOR: Yes, Your Honor.

25 THE COURT: Well, given the fact that -- did he

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1 serve any time for any of these that would ---

2 MR. CORVEY: --- several of them, Judge at least ---

3 THE COURT: --- when was he released on the 2004?

4 That looks like probably the most...

5 MR. CORVEY: He received a 20 year sentence
6 suspended to ten years and five years probation. So I
7 believe he would have been released sometime around 2013
8 or 2014.

9 THE COURT: Then that one would qualify under our
10 rule because it's ten years from the date of the crime or
11 date of release. How about the 2004?

12 MR. CORVEY: That was 2004. Were you asking about
13 the 2000, Judge?

14 THE COURT: Yes, I'm sorry; the 2000.

15 MR. CORVEY: The 2000 was ten to 12 months and five
16 years probation.

17 THE COURT: That probably would not.

18 MR. CORVEY: I think that is probably outside the
19 scope. And then the 2015 convictions for aggravated
20 battery and false imprisonment he received 15 years
21 probation for the aggravated battery and five years
22 probation for false imprisonment. I imagine those would
23 apply.

24 THE COURT: Those would apply. So basically the
25 two would be. Okay.

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1 MR. CORVEY: Yes, sir.

2 THE COURT: All right.

3 MS. VAN PALA: Thank you, Your Honor. May it
4 please the court? Tamara Van Pala for Mr. Huger. Just
5 as a matter of housekeeping the motion to suppress the
6 checkbook on the search warrant we are withdrawing that
7 motion at this time.

8 THE COURT: Okay.

9 MS. VAN PALA: Thank you, Your Honor. We do have
10 the motion to exclude any evidence of prior bad acts, any
11 kind of information about prior crimes or prior bad acts
12 or prior drug use as included in the defendant's
13 statement. Should the court not grant the Denno hearing
14 and should the court admit the statements we would ask
15 that those portions be redacted.

16 THE COURT: What's the State's position?

17 MR. CORVEY: Judge, the three -- I think I included
18 this in the copy that I provided the court -- the three
19 clips that I included I believe as far as I'm concerned
20 I'm happy to redact anything further if there are any
21 objections. But I tried to make sure to exclude anything
22 I thought could be ---

23 THE COURT: --- I would agree with you that
24 certainly obviously if he testifies then he's free to be
25 cross-examined for impeachment purposes concerning those

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1 but the extent of any other prior bad acts I would agree.
2 But they have been excluded.

3 MS. VAN PALA: Thank you, Your Honor ---

4 THE COURT: --- or will be if they haven't been
5 already.

6 MS. VAN PALA: Thank you, Your Honor. We believe
7 that the State may intend on trying to admit a copy of
8 the defendant's booking photo in its case in chief and
9 under State v Traylor [phonetic] our argument is that it
10 is unduly prejudicial. The State does not need to admit
11 the copy of his booking photo because the State will most
12 likely try to identify the defendant in court. So under
13 the case law the booking photo is unnecessary to prove
14 identity as part of the State's case in chief and under
15 403 it is unduly prejudicial.

16 THE COURT: Okay. What's the State's position?

17 MR. CORVEY: Judge, at this stage I'm not prepared
18 to decide whether or not I need it or not. So I think it
19 might be a little premature to decide on this at the
20 moment.

21 THE COURT: My feeling is unless there is some
22 basis that is created by the record I would more than
23 likely exclude it. But again, I don't know what's going
24 to happen at trial so to some extent that has to be
25 contingent upon unless there is another basis for it.

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1 And there may be; I don't know. So I will tell you that
2 more than likely that would be my ruling should he offer
3 it but at that time I can make a ruling and then I would
4 be able to articulate quite frankly as to whether the 403
5 analysis would -- obviously if it could come in otherwise
6 I'd still have to do the 403 analysis. So I can't
7 possibly do that until I know what the basis for it is.

8 MR. CORVEY: And Judge the basis I would use it at
9 trial if we get to that point would be a side by side
10 comparison of his booking photo from that day compared to
11 the surveillance video from the bank would be my primary
12 purpose.

13 THE COURT: And as I say for instance if there is
14 an attack on the witness or attack and you can't say
15 that's that person that may open the door. But I can't
16 rule on what is going to happen when I don't know what's
17 going to happen.

18 MR. CORVEY: Thank you, Judge.

19 THE COURT: I hear you but we'll have to defer that
20 until time of trial and the proceedings.

21 MS. VAN PALA: Thank you, Your Honor. Our other
22 two pretrial motions are for a Jackson v Denno hearing
23 and a Neil v Biggers hearing.

24 THE COURT: All right. We'll do the Jackson v
25 Denno hearing first and then we'll do the Neil v Biggers

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1 hearing.

2 MR. CORVEY: Thank you, Judge. Judge, I'm
3 having...

4 THE COURT: That's fine.

5 MR. CORVEY: Sam Riedel is my case agent so I'm
6 going to have him sit in. Mr. Lawless is my first
7 witness.

8 THE COURT: That's fine. He can come on up.

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1 MR. CORVEY: The State would call Matt Lawless.
2 [Whereupon, Mr. Lawless comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please state your full name and
6 spell your last name for the record.

7 THE WITNESS: Sergeant Matt Lawless, L-A-W-L-E-S-S.

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9

MATT LAWLESS,

10 Having been first duly sworn,

11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. CORVEY:

14 Q. Good afternoon, Sergeant Lawless. Where are you
15 employed?

16 A. North Charleston Police Department.

17 Q. How long have you been with North Charleston?

18 A. Approximately 15 years.

19 Q. If you could just take a minute and describe to the
20 court some of your various duties and roles you've held
21 within the North Charleston Police Department.

22 A. I've been on patrol, investigations, neighborhood
23 resource officer, patrol supervisor, neighborhood
24 resource officer supervisor, detective supervisor, and
25 I'm currently a neighborhood resource officer supervisor

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1 again.

2 Q. Now where were you assigned in December 16, 2015?

3 A. Detective supervisor of the white collar unit.

4 Q. And what sort of crimes did that white collar unit
5 handle?

6 A. It handled fraud, forgery, and bank robbery.

7 Q. And so as your assignment as the supervisor of that
8 unit what did you day to day duties include?

9 A. Investigate cases and assigning cases, working cases
10 interviewing suspects, search warrants.

11 Q. And in that role I think you just mentioned this but
12 I'll ask again did you routinely take statements from
13 individuals?

14 A. Yes.

15 Q. And I understand this may be difficult to come up
16 with an exact figure but as best as you can guess
17 approximately how many statements have you taken in your
18 career?

19 A. A lot I'm sure.

20 Q. Now in December 16, 2015 did you have the occasion
21 to become involved in this case?

22 A. Yes, I did.

23 Q. And please explain how that came about?

24 A. I responded to the scene, spoke to the officers on
25 scene, spoke to Detective Riedel on the scene ---

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1 Q. --- and sorry to interrupt but just to be clear what
2 did you arrive on scene for?

3 A. I was the supervisor so I responded to the scene to
4 make sure all statements were taken care of and that
5 everything was being done at the bank.

6 Q. And this was a bank robbery?

7 A. Yes. I was walking the area and I found a black
8 truck in the parking lot that was running with the
9 windows down. I ran the tag and it came back to the
10 defendant that we had in custody. At that time I had the
11 vehicle secured and towed to the warehouse for a search
12 warrant.

13 Q. What happened after your duties on the scene?

14 A. After I cleared from the scene I responded to City
15 Hall to interview the defendant.

16 Q. Now in responding to City Hall what did you do next?

17 A. Once I arrived at the City Hall I went in and met
18 with the defendant with Agent -- with the FBI.

19 THE COURT REPORTER: Agent who?

20 THE WITNESS: Munoz.

21 THE COURT: Mr. Lawless, one of the things I noticed
22 and I don't fault you because everybody speaks at their
23 own pace but I'm watching your video and your interview
24 you need to slow down if you can. It will help us --
25 help me tremendously to comprehend and it will help my

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1 court reporter getting everything you say. So if you
2 would I'd appreciate it.

3 THE WITNESS: Yes, sir.

4 Q. [Mr. Corvey] Now I believe you said you and Special
5 Agent Munoz with the FBI went in to interview the
6 suspect.

7 A. Yes, we did.

8 Q. And how did he arrive there?

9 A. The suspect?

10 Q. Yes, sir?

11 A. Patrol transported him there.

12 Q. And was he detained on scene or in the vicinity of
13 the bank?

14 A. In the vicinity of the bank.

15 Q. Now when you entered the interview room what was the
16 suspect doing?

17 A. He was kind of laying on the table.

18 Q. And what did you guys ask him to do?

19 A. To sit up and that we were there to talk to him.

20 Q. Were you in uniform?

21 A. I was not. I was in my shirt and tie.

22 Q. So plain clothes?

23 A. Yes.

24 Q. Now as far as your initial observation of the
25 suspect did he appear to be under the influence of

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1 anything?

2 A. He did not.

3 Q. Did you ask him as much?

4 A. At some point during the interview we did ask him if
5 he was under anything.

6 Q. And through the course of the interview in total did
7 he ever appear to be under the influence of anything to
8 you?

9 A. No.

10 Q. Now prior to you and Agent Munoz entering the room
11 were you aware of how long he had been there?

12 A. No.

13 Q. And when you guys entered was there anyone else in
14 the room with the individual?

15 A. No.

16 Q. Was he wearing handcuffs?

17 A. Yes, he was handcuffed in the front.

18 Q. And when you say in the front how would that be
19 different from any other sort of handcuff?

20 A. Usually they are handcuffed in the back but he was
21 handcuffed in the front so he could sign statement forms
22 and stuff.

23 Q. So after you entered what were your first steps in
24 making contact with the suspect?

25 A. I made contact with him. I read him his Miranda

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1 rights from our Advice to Rights form. He read them. He
2 advised that he understood and signed them and advised
3 that he understood his rights and that he wished to speak
4 to us.

5 Q. Is this a standard form that you have through North
6 Charleston?

7 A. Yes.

8 Q. Does it go through each of his Miranda rights
9 individually?

10 A. Yes.

11 Q. Is there a line to sign after each right?

12 A. Yes.

13 Q. Did he voluntarily sign each right?

14 A. Yes.

15 Q. What did that indicate to you?

16 A. That he understood them.

17 Q. Now following the waiver of rights did you ask him
18 if he wished to speak to you?

19 A. Yes.

20 Q. What did he indicate?

21 A. Yes.

22 Q. At any point did he ask to leave or to terminate the
23 interview?

24 A. No.

25 Q. At any point did he ask for an attorney?

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1 A. No.

2 Q. At any point did he indicate to you in any way
3 either verbally or some other form of communication that
4 he didn't understand the rights that you went through
5 with him on the North Charleston waiver of rights form?

6 A. He did not.

7 Q. Now approximately how long did the process take from
8 you and Agent Munoz entering to the completion of the
9 Waiver of Rights form?

10 A. Minutes.

11 Q. So after five minutes or so what happened next?

12 A. I started talking to him about what happened and he
13 immediately confessed to the bank robbery.

14 Q. Now if you were to compare this to other interviews
15 or interrogations that you've done how would you compare
16 this one against others as far as the cooperativeness of
17 the defendant?

18 A. He was very cooperative. He told us what he did
19 almost immediately.

20 Q. Did you barely ask him any question before he
21 started confessing?

22 A. Not really.

23 Q. Now regarding his statement of confession in and of
24 itself if you could as best you can remember can you just
25 sort of sum up how that went from the course of

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1 completing the Miranda form towards beginning the
2 questioning?

3 A. We started speaking to him and he asked if he could
4 get some water. I went outside and asked somebody to get
5 him some water. They brought him a cup of water.

6 We started speaking to him about what happened. He
7 told me he said he did it. We started asking him about
8 his day to day and what got him in that area that day.
9 He kind of as I said he told us he did it.

10 Then we went into speaking to him a little bit more
11 about why he did it and why he was there, why he was in
12 the area and why he chose that bank.

13 Q. Now as to your conversation specifically regarding
14 the bank robbery about how long did that portion of the
15 statement take?

16 A. Ten to fifteen minutes.

17 Q. Now after that ten to fifteen minutes did y'all
18 continue to speak to him?

19 A. Yes, he advised of the drug problem and he said he
20 did it because he needed money. We talked about why he
21 did what he did and then we went into speaking about
22 where he gets his drugs from.

23 Q. And is it fair to say the conversations regarding
24 the drug problems and possible assistance he may have
25 been able to provide you regarding drug investigations or

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1 the FBI and North Charleston narcotics division more
2 specifically that was rather lengthy.

3 A. Yes.

4 Q. As to the conversation regarding the bank robbery
5 itself you said that took about ten to 15 minutes?

6 A. Yes.

7 Q. Now did you once the conversation shifted toward
8 other matters did the bank robbery come back up at all?

9 A. I think some but not too much.

10 Q. But nothing more substantial than what was covered
11 in the first ten to 15 minutes?

12 A. No.

13 Q. Now at any point during the course of your
14 conversation with the defendant did you try to coerce
15 him?

16 A. No.

17 Q. Was this conversation recorded?

18 A. Yes.

19 Q. How was that recorded?

20 A. On video.

21 Q. Was that entered into evidence?

22 A. Yes, I believe so.

23 Q. Would that have captured the audio and visual
24 recording of everything that happened in that room?

25 A. Yes.

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1 Q. Now before you and Agent Munoz started talking to
2 him did you promise him anything in return for providing
3 you a statement?

4 A. I did not.

5 Q. Are you aware of anyone else in the North Charleston
6 Police Department or other law enforcement agencies
7 promised him anything in exchange for giving his
8 statement?

9 A. No.

10 Q. And we covered this slightly earlier but you had
11 mentioned just a moment ago that some drug, possible drug
12 issues that he may have had came up. After that came up
13 did he in any way at that point appear to be under the
14 influence of anything?

15 A. No.

16 Q. Did you ask him that?

17 A. I believe we did and he said that he may have used
18 some the day before I think he said.

19 Q. But not that day?

20 A. No.

21 Q. At any point during the process did he appear to be
22 confused?

23 A. No.

24 Q. Or incoherent?

25 A. No.

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1 Q. Did he ever ask for a lawyer?
2 A. No. He was very cooperative throughout the whole
3 ordeal.
4 Q. Was he ever denied access to the bathroom or water?
5 A. No.
6 Q. Through the course of your conversation with him are
7 you aware of his educational background?
8 A. Yes. He advised that he graduated high school and
9 that he had some various certificates -- I can't remember
10 exactly what they were for.
11 Q. Various professional certificates?
12 A. Yes.
13 Q. Did he indicate whether or not he attended college?
14 A. I don't recall but I think he said he attended some
15 college.
16 Q. Some college?
17 MR. CORVEY: Beg the court's indulgence.
18 THE COURT: Certainly.
19 [Whereupon, Mr. Corvey reviews documents]
20 MR. CORVEY: No further questions.
21 THE COURT: Any cross-examination, Ms. Proctor?
22 MS. VAN PALA: Thank you, Your Honor. May it
23 please the court?
24 THE COURT: Oh, Ms. Van Pala; I'm sorry.
25 MS. VAN PALA: Thank you, Your Honor.

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1 CROSS-EXAMINATION

2 BY MS. VAN PALA:

3 Q. He was transported to headquarters by North

4 Charleston police officers, correct?

5 A. Yes, ma'am.

6 Q. And when he was apprehended he was surrounded by

7 approximately five or ten North Charleston police

8 officers?

9 A. I don't know, ma'am.

10 Q. The Solicitor asked you if you had made any promises

11 before he confessed to the bank robbery, correct?

12 A. Correct.

13 Q. However, you did discuss certain representations

14 after he confessed to the bank robbery, correct?

15 A. I don't recall.

16 Q. You interviewed him with Agent Munoz who is an FBI

17 agent, correct?

18 A. Yes, ma'am.

19 Q. And that agent told Mr. Huger that he was an FBI

20 agent, correct?

21 A. I don't recall but I think so.

22 Q. And he showed him his badge, correct?

23 A. I believe so.

24 Q. And you showed him your badge, correct?

25 A. Yes.

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1 Q. Did you ever offer him food or ask if he was hungry?

2 A. I don't recall. All I remember is giving him water.

3 Q. The Solicitor asked you if he ever wanted to stop
4 the conversation, correct?

5 A. Yes.

6 Q. However, Sheldon did tell you that he didn't want to
7 talk anymore, correct?

8 A. At one point he said that he was like listen, I did
9 what I did, I did it and I told you I did it and
10 continued talking after that.

11 Q. He said he confessed to the bank robbery?

12 A. Yes.

13 Q. He said that was it?

14 A. What do you mean?

15 Q. That he was done confessing to the crime.

16 A. He said he confessed to the bank robbery and that he
17 did what he did but he continued to talk after all that.

18 Q. And he said he wasn't confessing to any more crimes?

19 A. We didn't ask him about any other crimes I don't
20 believe. I believe we went into asking him about who he
21 got his drugs from and stuff like that.

22 Q. When you said that he had already confessed to the
23 bank robbery he said that everything else was irrelevant,
24 correct?

25 A. I don't recall his exact words but something to that

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1 extent.

2 Q. In fact Mr. Huger said -- excuse me, after Mr. Huger
3 said he didn't want to talk you and Agent Munoz asked him
4 if he was sure he was done talking, correct?

5 A. I don't recall.

6 Q. You asked him if he had anything else to say.

7 A. I don't recall the exact words.

8 Q. Would a transcript of the interview refresh your
9 memory?

10 A. It might. I watched the video last week and that's
11 the first time I've watched it since the incident.

12 Q. And after you reviewed the video did you hear that
13 approximately five times you asked Mr. Huger if he had
14 anything else to say?

15 A. I don't recall.

16 Q. Mr. Huger said he didn't have a weapon, correct?

17 A. I believe so -- yes, he did say he did not have one.

18 Q. And you didn't think he had a weapon, correct?

19 A. I don't know that he didn't have one.

20 Q. Excuse me?

21 A. I don't know that he didn't have one but he said he
22 didn't have one.

23 Q. And nobody ever told you that he had a weapon,
24 correct?

25 A. Nobody told me personally, no.

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1 Q. There was a discussion about Mr. Huger's case going
2 federal, correct?

3 A. I think we may have discussed it, yes.

4 Q. And do you recall the discussion about federal
5 sentencing guidelines?

6 A. I don't know.

7 Q. After you reviewed the recording of the interview do
8 you remember a discussion about the sentencing guidelines
9 in federal court?

10 A. I don't.

11 Q. Do you recall discussing the sentencing guidelines
12 of five to 25 years?

13 A. I do not.

14 Q. Do you recall a conversation about Mr. Huger being
15 charged with armed robbery?

16 A. I know we talked to him about his prior convictions
17 in the interview at some point.

18 Q. Do you remember asking Mr. Huger whether he was
19 talking to somebody else about the bank robbery?

20 A. Yes.

21 Q. Do you remember asking him if he knew anything about
22 the bank robbery the prior day?

23 A. Yes.

24 Q. He responded that he didn't know anything about the
25 bank robbery, correct?

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1 A. Yes.

2 Q. But you asked him if he had anything to do with the
3 bank robbery, correct?

4 A. Yes.

5 Q. After your investigation was concluded you have no
6 reason to believe that he was involved in the prior bank
7 robbery, correct?

8 A. Correct.

9 MS. VAN PALA: Court's indulgence.

10 THE COURT: Certainly.

11 [Whereupon, Ms. Van Pala and Ms. Proctor confer]

12 MS. VAN PALA: Thank you, Your Honor.

13 THE COURT: Redirect?

14 MR. CORVEY: Briefly, Your Honor.

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1 REDIRECT EXAMINATION
2 BY MR. CORVEY:
3 Q. I think Ms. Van Pala asked you regarding food. At
4 any point did he ask you for food?
5 A. Not that I recall.
6 Q. She asked you a lot about your and Agent Munoz's
7 conversations with him subsequent to the bank robbery.
8 A. Yes, sir.
9 Q. I think I kind of tipped my hand with my question
10 but did those all occur subsequent to this confession of
11 the bank robbery?
12 A. Yes.
13 Q. Again, we went over this on direct how long in
14 duration did I guess the majority of your conversation
15 regarding the bank robbery take place?
16 A. Probably ten to fifteen minutes.
17 Q. Was that the very beginning of the interview?
18 A. Yes.
19 Q. And so everything else Ms. Van Pala asked you about
20 happened subsequent to your conversation with him
21 regarding the bank robbery?
22 A. Yes.
23 Q. In your beginning conversations with him regarding
24 the bank robbery were any promises made to him?
25 A. No.

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1 Q. Were any sentencing guidelines discussed with him?

2 A. No.

3 Q. Was anything about the case going federal discussed
4 with him?

5 A. No.

6 Q. Was anything regarding narcotics discussed with him?

7 A. No.

8 Q. So is it fair to say the first ten to fifteen
9 minutes of your conversation with Mr. Huger only involved
10 his involvement in the bank robbery?

11 A. Yes.

12 MR. CORVEY: No further questions, Your Honor.

13 THE COURT: Recross?

14 MS. VAN PALA: No thank you, Your Honor.

15 THE COURT: Very well. You may come down. Thank
16 you.

17 [Whereupon, the witness is excused and exits the
18 witness stand]

19 THE COURT: Do you have any additional witnesses?

20 MR. CORVEY: No, Your Honor.

21 THE COURT: Any witnesses?

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1 MS. VAN PALA: Thank you, Your Honor. The defense
2 calls Agent Munoz, please.

3 [Whereupon, Agent Munoz comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Please speak into the microphone
7 and state your full name and spell your last name.

8 THE WITNESS: My name is Derrick Munoz, M-U-N-O-Z,
9 Gerrick, G-E-R-R-I-C-K.

10 - - - - -

11 GERRICK MUNOZ,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. VAN PALA:

16 Q. Agent Munoz, could you tell us your occupation?

17 A. Yes, ma'am. I work for the Federal Bureau of
18 Investigation here assigned to the Charleston resident
19 agency.

20 Q. How long have you been an FBI agent?

21 A. I've been an FBI agent for over 18 years now.

22 Q. Were you the federal agent assigned to investigating
23 this case regarding the defendant, Sheldon Huger?

24 A. Yes, ma'am.

25 Q. How did you become involved in this case?

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1 A. Typically with the bank robberies we're called by
2 the police department or we're called by the corporate
3 security of the bank. Because the banks are FDIC insured
4 they become involved in the investigation.

5 Typically we assist the police department in the
6 investigations and depending on the investigation
7 sometimes we will take them to Federal Court.

8 Q. Do you have a specific title as a federal agent at
9 this time?

10 A. No ma'am; just special agent.

11 Q. A specific assignment?

12 A. I work violent crimes in the Charleston area to
13 include bank robberies, drugs, gangs, violent crimes
14 against children; a little bit of everything.

15 Q. Were you contacted by North Charleston Police
16 Department about this incident?

17 A. Yes ma'am, I was.

18 Q. Do you recall by who?

19 A. I don't remember the specific phone call as far as
20 the actual calling detective. I just remember getting
21 the phone call and then responding to the North
22 Charleston headquarters because they already had a
23 suspect in custody.

24 Q. Do you remember around what time on the day of the
25 incident?

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1 A. Just guessing based on the robbery time I want to
2 say it was somewhere around 5 o'clock, somewhere around
3 5:50 p.m.

4 Q. Do you remember how long you interviewed the
5 defendant?

6 A. I do not remember a time no ma'am as far as the
7 length of time of the interview.

8 Q. About four hours?

9 A. I don't remember talking to him at one particular
10 for four hours, no ma'am. I don't believe it was that
11 long. I mean of course there is the -- I believe it was
12 videotaped so based on the video tape you should have an
13 exact time.

14 Q. Were you able to review that videotape prior to
15 testimony today?

16 A. No ma'am, I have not seen it.

17 Q. Based on your conversation with the defendant do you
18 believe that he had a weapon at the time of the crime?

19 A. Again I didn't see him until I was actually at North
20 Charleston headquarters so I didn't -- I, of course knew
21 he had been searched and there were other detectives
22 there so I knew he didn't have a weapon on him when I
23 arrived at the headquarters there. As far as you're
24 talking about during the commission of the crime?

25 Q. Yes?

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1 A. I can't make an assumption. I don't know whether he
2 had one or not. I know that one was not found.

3 Q. Do you recall again interviewing him and asking him
4 if he had a weapon?

5 A. I'm sure I would have asked him that because I
6 believe it was on the demand note. Again, I haven't
7 reviewed exactly what the demand note said but I believe
8 it did say that he had a weapon on the demand note.

9 Q. And as a result of your investigation as a whole no
10 one ever -- you came to the conclusion that he wasn't
11 armed with a weapon.

12 A. We did not believe that he was armed with a weapon
13 at that time just based on his statements.

14 Q. Do you recall during his interview that the
15 defendant expressed a desire to end the interview?

16 A. I don't remember him saying he wanted to stop
17 talking at any particular time. He was actually very
18 cooperative during the interview, even before the
19 interview. Again, he was very cooperative during the
20 interview.

21 Q. He confessed to the bank robbery?

22 A. Yes ma'am, he did.

23 Q. And then he said everything else was irrelevant?

24 A. Excuse me?

25 Q. He said everything else after his confession was

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1 irrelevant?

2 A. I'm not sure what part you're saying would be
3 irrelevant of the interview. Every aspect of his
4 interview would be relevant to his statement.

5 Q. Any statement other than the confession to the bank
6 robbery are irrelevant.

7 A. To the crime of the bank robbery but not necessarily
8 to additional crimes.

9 THE COURT: Are you saying he said that or are you
10 just making a statement?

11 MS. VAN PALA: The defendant.

12 THE COURT: Okay, that's fine. I just wanted to
13 clarify.

14 A. I believe that all of his statements during any
15 interview would be relevant to either that crime or
16 previous crimes.

17 Q. [Ms. Van Pala] Mr. Huger said arrest me, take me to
18 jail?

19 A. He may have said that during the interview.

20 Q. However, after he said he had nothing else to say
21 you kept interviewing him.

22 A. I remember he did give us some information about
23 some people that he was acquainted with was there were
24 some crack dealers at the time.

25 Q. And during the interview you said to Mr. Huger this

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1 may end up helping you.

2 A. I may have said that yes, because any cooperation
3 that he gives absolutely may end up helping him later on
4 in the case.

5 Q. You asked if he had anything else he wanted to say
6 to get him out of trouble

7 A. Possibly, yes ma'am.

8 Q. You said he was cooperative and he gave you a lot of
9 information, correct?

10 A. He gave us some information about two individuals
11 that were not involved in the bank robbery.

12 Q. And you said you're cooperating; you help me I'll
13 help you, correct?

14 A. That's a typical statement we would make as far as
15 putting in a good word for them as far as their
16 cooperation; absolutely.

17 Q. And you said, you said to Mr. Huger you're only here
18 for your bank robbery, correct?

19 A. Well, the reason why he was there at that time yes.

20 Q. And you said you're cooperating trying to help
21 yourself out, correct?

22 A. If you got that from the video then I would say yes,
23 ma'am.

24 Q. And you said I promise I'll be straight with you,
25 correct?

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1 A. Yes, absolutely.

2 Q. You had no intention of charging him with armed
3 robbery, correct?

4 A. Not at that time. That determination isn't made by
5 me. I take the evidence to our Assistant U.S. attorneys.
6 We will discuss the case and sometimes U.S. Attorneys
7 will determine whether we want to charge that federally
8 or not.

9 Q. And as a result of your investigation you learned
10 that North Charleston didn't have any intention of
11 charging him with armed robbery, correct?

12 A. I knew that they were charging him with the bank
13 robbery but as far as having a weapon involved I haven't
14 actually seen the court papers to see exactly what the
15 charges said.

16 Q. And bank robbery is a state charge?

17 A. As far as what it is being charged here, yes ma'am.
18 But we are not charging it federally, no ma'am if that
19 was the question.

20 Q. Do you recall having a conversation with Mr. Huger
21 about the case going federal?

22 A. During the interview I'm assuming?

23 Q. Yes.

24 A. I can't remember exactly what may or may not have
25 been said. If you would like to read my statements I can

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1 confirm or deny.

2 MR. CORVEY: Your Honor, I would object at this
3 time. I don't what any of this has ---

4 THE COURT: --- I agree. You've gone -- I
5 understand what you're doing and I don't fault you for
6 trying to use it as a deposition but it is not going to
7 be used for that purpose so thank you because he's not
8 facing any federal charges. I mean that would have
9 something to do with federal charges. It doesn't have a
10 thing in the world to do with this charge in my opinion.

11 So I would sustain the objection. It's not
12 relevant. Go to something relevant, please.

13 MS. VAN PALA: Thank you, Your Honor.

14 THE COURT: Maybe during the trial but not for
15 purposes of his statement because as I understand it all
16 of this -- we've already by agreement all these other
17 things that you've asked to keep out that is prior bad
18 acts and talking about drug dealings they're going to be
19 out anyway so nobody is going to see that.

20 So there is no need to ask that question. You've
21 already prevailed on that. The only issue and you've
22 made your point, I'll be happy to rule whenever you want
23 me to as to whether or not these had anything to do with
24 his statement because his statement precedes everything.
25 So that's the problem he has in this case in my opinion

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1 from the standpoint of voluntariness of his statement.
2 It's almost but for the setting we may not even have to
3 have Miranda rulings or decisions because he just said I
4 did it without even asking him. But anyhow I'll make
5 that ruling when I need to but let's move on to something
6 else, Ms. Van Pala. Thank you.

7 MS. VAN PALA: Thank you, Your Honor.

8 Q. [Ms. Van Pala] Agent, you did say -- you were asking
9 Mr. Huger for total cooperation, correct?

10 A. Yes ma'am of course; as I would anybody.

11 THE COURT: Ms. Van Pala, there is no question he
12 cooperated. You've already made the point. I mean
13 you've ridden that horse as far as you need to ride it,
14 okay.

15 MS. VAN PALA: Thank you, Your Honor.

16 Q. [Ms. Van Pala] Agent, did you describe the interview
17 as a captive audience?

18 A. I'm not sure what you mean by that. But again, I'll
19 say it was a very casual conversation. He was very -- I
20 don't know if he'll like this word but he seemed very
21 defeated at the time. He was just like I want to get
22 this over with, yes I did it.

23 And then he explained exactly everything that he had
24 done coming up to the bank robbery as far as him being
25 homeless. He didn't plan it out from what I remember

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1 from the interview and from reading my statement before
2 -- I should say my report that I put into my file. But
3 he didn't premeditate it. He said he was just having a
4 bad day and he didn't pick that particular bank for any
5 other reason other than he was living in his truck nearby
6 there and just decided to go rob it.

7 Q. And you described -- during the interview you said
8 that you had come to an agreement with Mr. Huger,
9 correct?

10 A. I don't recall saying that we would come to an
11 agreement. I'm not sure what you mean by that. If you
12 can tell me exactly what my statements were.

13 Q. Because Mr. Huger ---

14 MR. CORVEY: --- Your Honor, I object to this. I'm
15 not sure what any of this has to do with his statement.

16 THE COURT: Well, I let her explore this as to some
17 agreement as to the pending State charges but I don't
18 know what good that will do. You can explore it as it
19 pertains to these charges.

20 Q. [Ms. Van Pala] You came to an agreement with Mr.
21 Huger that because he helped you, you would help him,
22 correct?

23 A. No promises are ever given in an interview. What I
24 can say is that if you do cooperate and go forward with
25 the investigation that we can always put in a good word

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1 for the defendant that may help him in the future.

2 Q. Do you recall ---

3 A. --- no promises can be made ---

4 THE COURT: --- Ms. Van Pala, you've made your
5 point, please. Let's move on. That point now is
6 established. The record establishes it. You can argue
7 that he was -- made his statement based on promises that
8 he was going to be helped. You've already made it; it's
9 there for you. You don't have to explore it any further.

10 MS. VAN PALA: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. CORVEY: No questions, Judge.

13 THE COURT: Thank you. You may step down.

14 [Whereupon, the witness is excused and exits the
15 witness stand]

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1 MS. PROCTOR: Court's indulgence.

2 [Whereupon, Ms. Proctor and Mr. Corvey confer]

3 MS. PROCTOR: Your Honor, I didn't know that this
4 time -- I know that the State provided you ---

5 THE COURT: --- I have the videos.

6 MS. PROCTOR: If we need to go over that to see
7 what the jury can hear. I don't know -- I do remember
8 some of what he says ---

9 THE COURT: --- we don't need to do -- we can go
10 over the statement after this. We don't need to be on
11 the record at this point; whatever portions are going to
12 be agreed upon. We know that there are some things, and
13 I'll be happy to do it as soon as we finish. What I want
14 to do is finish this particular hearing. I'm going to
15 then recess this proceeding because I've got another one
16 scheduled at 11 o'clock and I want to get those parties
17 heard and then we can revisit it.

18 So if y'all want to chat while we're doing that.
19 But let's hear -- I don't think that's necessary for
20 whether or not I'm going to allow the statement. So any
21 other witnesses that y'all wish to call?

22 MS. VAN PALA: No, Your Honor ---

23 THE COURT: --- I'll be happy to hear from you as
24 to why I should exclude the statement.

25 MS. VAN PALA: Thank you, Your Honor. Briefly ---

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1 THE COURT: --- just for the purposes of we're
2 talking about the statement as you all will agree and
3 that is selected portions of the statement. And quite
4 frankly I've read and watched the first part of it so
5 that's the part that I didn't time it but it's a very
6 short portion of it where he says I did it; go ahead I'm
7 the person. But any other parts that y'all can agree
8 upon we're talking about that. We're not talking about
9 the statement as a whole. I want you to understand that.
10 I'm not ruling that his statement comes in absolutely; it
11 doesn't, okay.

12 MS. PROCTOR: If we may have one moment.

13 THE COURT: Sure.

14 [Whereupon, Ms. Proctor and Ms. Van Pala confer with
15 their client]

16 MS. PROCTOR: Court's indulgence.

17 THE COURT: Tell you what, why don't we do this.
18 Let's take a recess and y'all go talk with your client.
19 And then while we're doing that we'll switch.

20 [Whereupon, the hearing is in recess]

21 THE COURT: Okay. Let the record reflect that Mr.
22 Huger is present. Thank y'all; I'm sorry to break that
23 but I needed to go ahead and have that hearing. We are
24 now back. You were having some conversations, Ms.
25 Proctor. Do we need to continue with the argument or do

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1 we need to have further testimony?

2 MS. PROCTOR: On the?

3 THE COURT: On whether or not the State -- the
4 portions that are going to be agreed upon to come in or
5 not.

6 MS. VAN PALA: Your Honor, the portions that the
7 State is intending to admit we would object to them under
8 Jackson V Denno. We'll make a contemporaneous objection
9 should the court allow them. If you would hear brief
10 argument?

11 THE COURT: That's what I'm asking you for. I want
12 to hear why I should exclude them.

13 MS. VAN PALA: Thank you, Your Honor. There are a
14 few cases, State v Peeke [phonetic], Arrowood [phonetic],
15 and Miller. And those are the line of cases that discuss
16 promises and supposed agreements as to sentencing with
17 officers in positions of apparent authority. The
18 federal agent his presence in the interrogation along
19 with NCPD detective was an influence on Mr. Huger to
20 confess to the crime.

21 THE COURT: Let me ask you a question because it's
22 been a long time since I practiced law. But just for my
23 edification there are none and were no pending federal
24 charges, is that correct?

25 MR. CORVEY: That's correct, Judge.

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1 THE COURT: And is there anything to prohibit the
2 Federal Court from charging him contemporaneously -- the
3 feds charging him contemporaneously with the State
4 charge?

5 MR. CORVEY: I don't know the answer to that, Your
6 Honor. I have seen it done ---

7 THE COURT: --- I know of situations where there
8 have been two pending charges, I know that. We have that
9 right now in fact in this jurisdiction. And in fact one
10 is going to be tried.

11 MR. CORVEY: And so to answer your question I think
12 that is certainly possible ---

13 THE COURT: --- I don't think there is any
14 prohibition about that but I just wanted to be sure of
15 that because that is kind of significant and goes to the
16 heart of what your argument is about the promises.

17 MS. VAN PALA: Yes, Your Honor. And based on the
18 interview the statement as a whole all conversations
19 among the federal agent and the North Charleston
20 detective and Mr. Huger we think that the promises were
21 that his bank robbery would not go federal, would not be
22 picked up by the feds in essence. We think that perhaps
23 promises were made that if he wasn't going to get charged
24 with armed robbery, which wouldn't trigger life in prison
25 without possibility of parole he would get a deal that he

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1 would get a lesser prison sentence and would be protected
2 from other criminals in prison. In other words that the
3 federal agents could arrange for him to be in a different
4 facility from other prisoners that he wanted to give
5 statements about.

6 Also we think that the detective and the agent tried
7 to force him into confessing to the prior bank robbery
8 that occurred the day before. They asked him multiple
9 times if he knew anything about the other bank robbery,
10 why he chose that bank in particular and why he chose
11 that teller. If he did get charged with both of those
12 bank robberies then the case could have gone federal for
13 multiple bank robberies.

14 THE COURT: Okay. Anything else?

15 MS. VAN PALA: Finally Judge ultimately Mr. Huger
16 was charged with armed robbery so he did suffer prejudice
17 by the prosecution since the State is currently seeking
18 LWOP.

19 THE COURT: Well, he's also charged with entering a
20 financial institution or a bank with intent to rob or
21 intent to steal isn't he?

22 MS. VAN PALA: Which would not -- if he is
23 convicted of the entering the bank it wouldn't
24 necessarily trigger life in prison without possibility of
25 parole.

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1 THE COURT: Why? Is it not a serious offense? I
2 thought y'all told me it was.

3 MS. VAN PALA: It is a serious strike.

4 THE COURT: It's just a strike.

5 MS. VAN PALA: Yes, Your Honor ---

6 THE COURT: --- which puts him over the limit.
7 It's not armed robbery which would be a most serious
8 offense I think. But it's clearly a strike and according
9 to what was argued would put him over the limit, correct?

10 MS. VAN PALA: Actually, Your Honor ---

11 THE COURT: --- I'm just asking you whether -- so
12 you're saying it's not a strike?

13 MS. VAN PALA: It is a strike, Your Honor.

14 THE COURT: I understand. And the question is
15 whether the charge in Georgia as I understand it will
16 carry a strike and if it does it will be a third strike.

17 MS. VAN PALA: Yes, Your Honor.

18 THE COURT: So your argument is what? If he gets
19 acquitted -- that's assuming first of all you said there
20 was a promise that he wouldn't be charged with armed
21 robbery?

22 MS. VAN PALA: Your Honor, before today before
23 we...

24 THE COURT: Just help me, Ms. Van Pala. I asked
25 you a specific question. In your argument because I

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1 don't recall that ever being stated by anybody that we're
2 not going to charge you with armed robbery. I don't
3 recall that being a promise made.

4 MS. VAN PALA: I think the federal agent said we're
5 not going to put any other charges on you; no more no
6 less.

7 THE COURT: All right, and again the federal agent
8 made that statement, correct?

9 MS. VAN PALA: Yes, Your Honor.

10 THE COURT: Okay. And the federal agent as I
11 understand there are no charges nor are there any pending
12 nor any anticipated. So obviously if there is a federal
13 charge you've got a good argument for suppressing the
14 statement for the fed charge maybe. Although I guess
15 that's a matter of interpretation. I can tell you now
16 I'm not going to rule that it applies at all because it
17 doesn't deal with the State charges.

18 And I understand you trying to say well it affects
19 the State charges and that's fine. You've made your
20 record on that. I don't agree with you. I don't think
21 it was a promise for anything because he'd already
22 admitted everything first of all. So it wasn't a promise
23 that caused him to make any statements. He just chose to
24 make the statements period. In fact, I think you said,
25 and I haven't seen that part I confess that, where he

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1 said I don't want to talk about it and it's all
2 irrelevant I've already told you I did this. That was
3 him saying that, not them. So he had already decided he
4 wanted to plead to it for whatever reason he wanted to.

5 I appreciate your argument but I don't find that to
6 be any reason for excluding the statement. And you know
7 and I know that the record -- you were telling me I
8 shouldn't because there were promises made whether there
9 are other promises in these statements, that's fine. I'm
10 comfortable because as I stated this statement is
11 probably as clear as a bell because the confession comes
12 in before there is really any discussion about it. I
13 mean it's just there. They are supposed to say excuse
14 me, but you didn't understand you really don't want to
15 confess yet because I haven't asked you enough about it.
16 It was there and so it's fine.

17 Your motion is noted, your argument is noted and I
18 decline it. I'm going to allow it. I find by a
19 preponderance of the evidence the statement is freely,
20 voluntarily, knowingly and intelligently made by him
21 after being fully advised of his rights as it pertains to
22 the State charges. There is nothing else for me to say
23 about that because there are no federal charges because I
24 don't have any control over the feds anyway. My brothers
25 and sisters over there take care of that; or my cousins I

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1 guess more than brothers and sisters can take care of
2 that. Okay.

3 MS. VAN PALA: Thank you, Your Honor. Just a few
4 final pretrial matters?

5 THE COURT: Sure.

6 MS. VAN PALA: Regarding the Georgia conviction
7 that the State believes would count as a serious strike
8 we just found out that the State was intending to argue
9 that this morning. I believe the life statute does have
10 a notice provision so at this time we are not conceding
11 that that would be a strike offense. Our defense in our
12 motion right now before the court is that as charged with
13 his South Carolina record if he is found guilty of the
14 bank robbery that does not trigger life in prison and
15 only is triggered if he is convicted of ---

16 THE COURT: --- so you are agreeing with the
17 State's next motion and that is to continue this case?

18 MR. CORVEY: I have a made a motion to continue it.

19 THE COURT: I understand that. You're going to
20 make a call. They are arguing and the point is well
21 taken and I'll have to interpret that to whether you can
22 proceed because there is no notice of that.

23 MR. CORVEY: We would not be able to accord by the
24 notice statute at this point and I completely agree with
25 Your Honor ---

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1 THE COURT: --- so I assume and that's why I said
2 what I said I assumed you would want to try this case
3 when it is scheduled to try it because we don't have the
4 time.

5 MS. VAN PALA: Well, Your Honor, I think that if we
6 had a little bit more time to research the issue then we
7 could have this...

8 THE COURT: I'll tell you what. We'll leave it in
9 place and y'all can make your motions as to what you want
10 to do. Right now I agree with you that there is no
11 notice although you will shortly be on notice if you
12 haven't already I guess in theory but you have to serve
13 it specifically so you need to serve ---

14 MR. CORVEY: --- I've not specifically served it,
15 Your Honor.

16 THE COURT: So you serve it and I'll be happy to
17 entertain anything. But you are aware, for purposes of
18 the record you are aware that is the intent of the State,
19 correct Ms. Van Pala?

20 MS. VAN PALA: Yes, Your Honor.

21 THE COURT: And you've discussed that with your
22 client as well?

23 MS. VAN PALA: Yes we have, Your Honor.

24 THE COURT: And you've discussed your positions and
25 I'm not asking you to divulge anything you've discussed

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1 but y'all have discussed with him that if the court does
2 consider it to be a strike that that will be a third
3 strike?

4 MS. VAN PALA: Yes, Your Honor.

5 THE COURT: Okay. Thank you very much.

6 MS. VAN PALA: Your Honor, we would make a motion
7 to dismiss the armed robbery charge and a motion to quash
8 the armed robbery indictment because the officers
9 testified that there was no evidence that he had a gun or
10 a physical representation of a gun.

11 THE COURT: I appreciate that and if they testify
12 to that fact before a jury that's fine. That would be
13 circumstantial evidence to be considered with the
14 testimony of the victim who since they weren't there they
15 are saying they don't believe that I don't think they get
16 to render an opinion on what the jury should do but your
17 motion is noted and denied.

18 MS. VAN PALA: Thank you, Your Honor.

19 THE COURT: Thank you. What else?

20 MR. CORVEY: Judge, I believe they also have a
21 Biggers motion and I have Detective Riedel here to argue
22 that motion. As for the Denno may I excuse my witnesses?

23 THE COURT: Absolutely.

24 MR. CORVEY: Thank you, Your Honor.

25 MS. PROCTOR: May we have one moment, Your Honor?

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1 THE COURT: Sure. Thank y'all, I appreciate it.

2 MR. CORVEY: And Judge I guess as a practical
3 matter and you hit on this before I could get to it my
4 hope, as per our discussions in chambers was to try to
5 resolve this case ---

6 THE COURT: --- oh, I understand that.

7 MR. CORVEY: And so I extended the 25 year offer we
8 discussed in chambers to them. It is my understanding he
9 wants to reject that at this point. Depending on whether
10 or not that decision has been made or not that may
11 influence whether or not I go forward with a continuance.

12 THE COURT: Let's do this from the standpoint of
13 that. I'm here tomorrow and the next day. If at the
14 close of business of 5 o'clock on Friday -- excuse me,
15 I'm participating in a seminar at noon. So by noon
16 Friday if it is not formally rejected on the record it
17 will be deemed and considered rejected. So if there is
18 no plea before 12 o'clock Friday it is a rejected offer.
19 That way we won't have to burden Mr. Huger with coming
20 back.

21 MS. VAN PALA: Should we go forward with the
22 Biggers motion.

23 THE COURT: Yes, we're ready to go.

24 MS. VAN PALA: Thank you, Your Honor.

25

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1 MR. CORVEY: The State calls Detective Sam Riedel.

2 [Whereupon, Detective Riedel comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: If you will state your full name
6 and spell your last name for the record.

7 THE WITNESS: Sam Riedel, R-I-E-D-E-L.

8 - - - - -

9 SAM RIEDEL,

10 Having been first duly sworn,

11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. CORVEY:

14 Q. Good afternoon, Detective Riedel. Where are
15 employed?

16 A. At North Charleston Police Department.

17 Q. How long have you been with North Charleston?

18 A. Thirteen years.

19 Q. If you could take a moment and just describe for the
20 court some of your various roles and duties that you've
21 held with North Charleston Police Department.

22 A. I have served on our patrol division for
23 approximately four and half years, eight and half years
24 in our investigations division which I've been assigned
25 to the white color unit the South Carolina electronic

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1 crimes task force with the United States Secret Service,
2 and do digital forensic analysis for the North Charleston
3 Police Department.

4 Q. In December of 2015 what was your roles with the
5 North Charleston Police Department?

6 A. I was duly assigned to the white collar division and
7 the electronic crimes task force with the Secret Service.

8 Q. Did you have the occasion to become involved in this
9 case?

10 A. I did.

11 Q. In the capacity as detective?

12 A. Yes. And I was actually following up on a previous
13 statement.

14 Q. That leads to my next question how specifically did
15 you get involved in this case?

16 A. I was at the incident location returning evidence
17 from a robbery that occurred the previous day.

18 Q. Another bank robbery?

19 A. Another bank robbery, yes. I was at the teller's
20 window returning the recovered stolen money from that
21 robbery when Mr. Huger walked into the bank.

22 Q. And when you say walked into the bank where
23 specifically did he walk up to?

24 A. I was at the furthest right teller window. He
25 walked in the entrance door which is the other end of the

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1 building. After he walked in he approached the little
2 counter for people to fill out paperwork or do whatever
3 he approached that counter. I dismissed him at that
4 point and returned back to my focus on the evidence.

5 At that time he walked up to the teller station next
6 to me, approximately four feet, at that point I noticed
7 him and his actions.

8 Q. And they seemed suspicious to you?

9 A. Yes.

10 Q. Could you clearly see Mr. Huger at that point?

11 A. Yes.

12 Q. Was there anything obstructing your view of him?

13 A. No.

14 Q. Was the bank well lit?

15 A. Yes.

16 Q. About what time of the day did this happen?

17 A. Mid afternoon.

18 Q. While you were standing at the opposite teller
19 window about how long did you have the occasion to watch
20 Mr. Huger rob the bank?

21 A. Twenty to thirty seconds.

22 Q. And through that entire course could you see him
23 clearly you said four feet away from you?

24 A. Yes.

25 Q. What happened next?

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1 A. From the point he approached the teller counter or?

2 Q. I guess after the robbery concluded.

3 A. After he departed from the teller station I drew my
4 service weapon. I identified myself as a police officer
5 and advised for him to stop at which point he fled on
6 foot. He exited the bank, which is located in the front
7 of the shopping center.

8 He proceeded to run to the rear of the bank towards
9 the shopping center around the far left corner with me in
10 pursuit around the back of the building and then the
11 entire length of that shopping complex before I entered
12 the woods with ---

13 Q. --- let me stop you right there. So you guys ran
14 the alleyway behind the back of -- I guess you say
15 shopping center but you described it as a strip mall as
16 well ---

17 A. --- strip mall.

18 Q. So you run the entire length of that and then you
19 say it is some woods?

20 A. Yes.

21 Q. So he entered the woods at that point?

22 A. Yes.

23 Q. Where did the end of those woods connect to?

24 A. The end of the woods if proceeding straight in the
25 same direction of travel come out to Montague Avenue near

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1 the intersection of Montague and Dorchester.
2 Q. So at the point while you were chasing him had you
3 called 911 dispatch?
4 A. Yes.
5 Q. Were you on the phone with them the whole time?
6 A. Yes.
7 Q. Were you providing descriptions of the suspect you
8 were chasing?
9 A. Description, address, direction; everything that
10 would normally be communicated over a police radio I was
11 doing over the telephone.
12 Q. Because you didn't have a police radio on you at the
13 time?
14 A. Correct.
15 Q. At any point during your foot chase of Mr. Huger did
16 you ever lose sight of him?
17 A. No, not until he entered the woods.
18 Q. Until he entered the woods?
19 A. Correct.
20 Q. What happened after he entered the woods?
21 A. After he entered the woods I proceeded to the last
22 point which I knew he had been which is common practice
23 for a K-9 that way a K-9 knows where to start and I can
24 hold that position. I maintained a visual of that side
25 of the woods while awaiting the other units.

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1 Q. And I assume at this point many units are
2 responding?

3 A. We had both Charleston County and North Charleston,
4 yes.

5 Q. At some point shortly after that were you aware that
6 he was or that at least a suspect matching the
7 description of which you described was detained?

8 A. Yes.

9 Q. About how long after that?

10 A. Eight or so minutes give or take.

11 Q. From the point he went into the woods?

12 A. Yes.

13 Q. Now after he was detained what happened next?

14 A. I was transported by one of my co-workers over to
15 the point where the individual was detained at which
16 point I exited his car.

17 Q. So a co-worker gave you a ride over to where the
18 defendant was detained. Where was he detained
19 specifically?

20 A. If you're not familiar with the intersection of
21 Montague and Dorchester there are a few businesses facing
22 Dorchester ---

23 Q. --- sorry to cut you off. Where specifically was he
24 located at the time you got there in a car?

25 A. Across Montague in the parking lot of a church and a

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- 1 Circle K station I believe it is.
- 2 Q. And was he located there.
- 3 A. He was in a car which was parked.
- 4 Q. A police cruiser?
- 5 A. Yes.
- 6 Q. In the back seat of the police cruiser?
- 7 A. Yes.
- 8 Q. And he had been handcuffed at that point?
- 9 A. Yes.
- 10 Q. On your ride from your co-worker over to the
- 11 location where he was detained did he make any comments
- 12 to you or suggest in any way what the suspect appeared
- 13 like?
- 14 A. Not to my recollection, no.
- 15 Q. When you arrived on scene and exited your co-
- 16 worker's cruiser did you speak to anyone on scene
- 17 specifically before looking at the individual detained in
- 18 the back of the police cruiser?
- 19 A. I don't remember any distinct conversation. I
- 20 believe I went straight to the vehicle.
- 21 Q. Did anyone suggest to you to identify Mr. Huger as
- 22 the individual that you saw robbing the bank?
- 23 A. No.
- 24 Q. Did anyone at any point try to influence your
- 25 determination of whether or not the individual you saw

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1 seated in the police cruiser was Mr. Huger?

2 A. No.

3 Q. And you testified that at the time you saw him
4 robbing the bank when he was right next to you four feet
5 away and had a clear unobstructed view of him?

6 A. Yes.

7 Q. Was the individual you saw in the back of the police
8 cruiser that was detained the individual you witnessed
9 robbing the bank?

10 A. Definitely.

11 MR. CORVEY: No further questions, Your Honor.

12 THE COURT: Cross-examine?

13 MS. VAN PALA: Thank you, Your Honor. May it
14 please the court? Tamara Van Pala.

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1 CROSS-EXAMINATION

2 BY MS. VAN PALA:

3 Q. At the time of the identification there was only one

4 suspect singled out, correct?

5 A. Yes.

6 Q. No other suspects for you to identify?

7 A. No.

8 Q. So it was a show-up identification?

9 A. It could be considered a form of a show-up, however

10 as a police officer we're not commonly practiced to what

11 is a typical show-up, no.

12 Q. At the time of the identification you were

13 surrounded by police officers, correct?

14 A. Yes.

15 Q. You were transported by your sergeant, correct?

16 A. Not my sergeant, no; a sergeant, yes.

17 Q. I apologize. I didn't hear the last thing you said.

18 A. Sergeant Gee transported me, yes.

19 Q. Thank you, Officer. You didn't search for any other

20 suspects, correct?

21 A. No.

22 Q. You didn't search for any other witnesses, correct?

23 A. The only witnesses that I needed were being handled

24 by the officers at the bank. I believe there were some

25 people that saw us running and the tellers. Those were

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1 being handled by the other investigators.

2 Q. And you didn't take statements from any of those
3 witnesses?

4 A. I don't recall directly taking statements. I
5 reviewed them.

6 Q. Or the 911 callers correct?

7 A. I did not take statements from 911 callers, which I
8 believe other than myself may have been a teller.

9 Q. You were not shown a photo lineup, correct?

10 A. No.

11 Q. You were not shown the defendant in a lineup with
12 other individuals, correct?

13 A. No.

14 Q. When you identified the defendant he was alone in
15 the back of the cruiser?

16 A. Yes.

17 Q. He was sweating?

18 A. Yes.

19 Q. Breathing heavily?

20 A. Yes.

21 Q. Officers told you that they thought they caught the
22 suspect when they picked you up, correct?

23 A. I had been informed that they had observed a
24 gentleman coming out of the woods which they detained,
25 yes.

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1 Q. They wanted you to identify the suspect?
2 A. Yes. I was transported for the purpose of
3 identification.
4 Q. At the time of the identification all of the
5 officers were in uniform, correct?
6 A. I believe the majority of them were. There may have
7 been a couple of plain clothes officers.
8 Q. You were in plain clothes?
9 A. Correct.
10 Q. But the majority were in uniform?
11 A. The majority.
12 Q. And the defendant was wearing plain clothes,
13 correct?
14 A. Yes.
15 Q. There were no other black males except for the
16 defendant, correct?
17 A. Civilian or police officer wise?
18 Q. Both. Police officers?
19 A. I don't recall any other black male officers but I
20 can't be 100 percent certain. There were several cars
21 there.
22 Q. The majority of the officers were white males?
23 A. The majority yes. As a matter of fact, I take it
24 back; the individual whose car he was in was a black
25 male.

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1 Q. There were just two women and the rest of the
2 surrounding officers were men, correct?

3 A. At the...

4 Q. At the time of the identification?

5 A. I don't know. I didn't take a count of people by
6 sex. I just know there were other officers there.

7 Q. And when you saw Mr. Huger in the bank you only saw
8 him from the side angle, correct?

9 A. No. As I advised when he walked into the bank I did
10 turn and look so I had seen a direct profile as he was
11 walking in. So I had seen albeit brief him from a direct
12 front vantage point.

13 Q. And then when he turned to run you only saw him from
14 the back of the head, correct?

15 A. Yes.

16 Q. You never saw him throw a weapon, correct?

17 A. No.

18 Q. You never saw him throw a note, correct?

19 A. I did not see him throw a note, no.

20 Q. You never saw a weapon in his hands, correct?

21 A. I did not.

22 Q. You never saw a weapon in his waistband, correct?

23 A. The back of the waistband and the right side of his
24 waistband is the only vantage point that I had. I could
25 not see the left side.

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1 Q. And you didn't see a weapon there, correct?
2 A. In the back?
3 Q. Yes?
4 A. I did not.
5 Q. You never had the bank teller identify Mr. Huger?
6 A. No.
7 Q. You never signed a written statement that you
8 identified Mr. Huger, correct?
9 A. No.
10 Q. You never signed or initialed a picture of Mr.
11 Huger?
12 A. No.
13 Q. You wrote on the booking report that he wasn't
14 armed, correct?
15 A. He was not armed at the time of arrest, no. That's
16 what that question is normally an indicator.
17 Q. And you drafted the booking report, correct?
18 A. I believe I -- I at least reviewed it, yes.
19 Q. And the incident report?
20 A. Yes, my portion of the incident report.
21 Q. Thank you.
22 MS. VAN PALA: Thank you, Your Honor.
23 THE COURT: Okay. Redirect?
24 MR. CORVEY: Just briefly, Your Honor.
25

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1 REDIRECT EXAMINATION
2 BY MR. CORVEY:
3 Q. What was the individual you observed in the bank
4 wearing?
5 A. Red shirt, blue jeans.
6 Q. What was Mr. Huger wearing when he was detained?
7 A. Red shirt, blue jeans.
8 Q. Did they appear to the same red shirt the individual
9 you saw in the bank was wearing?
10 A. Yes.
11 MR. CORVEY: No further questions, Your Honor.
12 THE COURT: Recross Ms. Van Pala?
13 MS. VAN PALA: No, Your Honor, thank you.
14 THE COURT: Thank you. You may step down.
15 [Whereupon, the witness is excused and exits the
16 witness stand]
17 THE COURT: Any additional witnesses?
18 MR. CORVEY: None from the State, Your Honor.
19 THE COURT: Any additional witnesses?
20 MS. VAN PALA: No, Your Honor. Thank you.
21 THE COURT: I'll be glad to happy to hear from you
22 Ms. Van Pala.
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1 MS. VAN PALA: Argument in brief is that this was a
2 show-up identification. Show-up identifications are
3 inherently suggestive under the law. He was surrounded
4 by mostly police officers in uniform. Only the detective
5 who identified him was wearing plain clothes save the
6 suspect who is the defendant.

7 Most were white males and Mr. Huger is a black male
8 He was in the back of a police car sweating, handcuffed
9 and singled out. Your Honor, we would ask that you
10 suppress the identification based on its lack of
11 reliability. Thank you.

12 THE COURT: Thank you very much. And I agree with
13 you and I think I have thrown out a couple with a
14 suggestive nature of a show-up. But I don't think I've
15 ever had one like this in my career as a lawyer or a
16 judge. All I could think of is an ad that we see all the
17 time and I don't even know who it's for but the guy says
18 I'm not an officer I'm a bank monitor and we're having a
19 robbery.

20 This case it was that. You couldn't -- the only
21 thought I could say is if that is in fact Mr. Huger on
22 that particular day if it wasn't for bad luck you
23 wouldn't have had any luck because there is no question
24 about -- this isn't your average citizen. Been in law
25 enforcement for 13 years, detective, heightened

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1 awareness. He's aware there is a robbery. Something is
2 going on. And he tells you to stop right then and there
3 and pursues you. The show-up is nothing more than yep,
4 you've got my man, thank you. So I don't think what the
5 typical findings that we deal with and the suggestive
6 nature has anything to do with this particular case. In
7 fact I don't think it applies. I think it typically
8 applies with lay people and that's the way I've looked at
9 it.

10 That's the major distinction here. We're not
11 talking about a lay person. We're talking about a person
12 who is whether he is on duty for that he's on duty -- I
13 don't believe y'all are ever off duty unfortunately.
14 That's a tough job. So he was doing his job and did it
15 well. Thank you. Your motion is denied. His testimony
16 will be permitted. Thank you. Okay, anything else?

17 MS. PROCTOR: I think that's the end of our motions
18 but it's my understanding if the offer is 25 years for
19 entering a bank with intent to steal I think Mr. Huger
20 would like to take it now if you'd like to entertain it
21 now.

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1 THE COURT: Is the State ready to proceed?

2 MR. CORVEY: Yes, Your Honor.

3 THE COURT: I'll be happy to proceed with that. I
4 think that's a fair offer given everything we've had
5 because unfortunately this testimony is a slam dunk.
6 There is no question about that because I think there is
7 no question he is in the bank. I'm ready whenever y'all
8 are. You are Sheldon Huger?

9 MR. HUGER: Yes, sir.

10 THE COURT: You're aware of indictment 2016-4915
11 charging you with entering a bank with intent to steal?

12 MR. HUGER: Yes, sir.

13 THE COURT: And your lawyer has explained that
14 charge to you?

15 MR. HUGER: Yes, sir.

16 THE COURT: And that is the elements of that crime
17 which really don't even require to be consummated as I
18 understand it is if you enter and if they prove the
19 intent to steal that's all they have to prove that it was
20 you, do you understand?

21 MR. HUGER: Yes, sir.

22 THE COURT: You have been through your lawyers
23 involved in negotiating and we've talked about that as
24 well on the record in this case and you are now wanting
25 me to accept what you have been able to negotiate at this

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1 stage of the process, is that correct?

2 MR. HUGER: Yes, sir.

3 THE COURT: And it's 25 years?

4 MR. HUGER: Yes, sir.

5 THE COURT: Your lawyer has explained that that
6 charge normally carries up to 30 years.

7 MR. HUGER: Right, yes sir.

8 THE COURT: But I guess really that's one factor
9 but it's also considered a serious offense, do you
10 understand that?

11 MR. HUGER: Yes, sir.

12 THE COURT: And you understand the significance of
13 that?

14 MR. HUGER: Yes, sir.

15 THE COURT: It's also considered a violent offense
16 and do you understand the significance of that, sir?

17 MR. HUGER: Yes, sir.

18 THE COURT: It's also a non-paroleable offense. Do
19 you realize that?

20 MR. HUGER: Yes, sir.

21 THE COURT: Which means that you will serve 85
22 percent of the 25 years before you would be eligible to
23 be released, do you understand that?

24 MR. HUGER: Yes, sir.

25 THE COURT: According to my math that's 21.25

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1 years, do you understand that?

2 MR. HUGER: Yes, sir.

3 THE COURT: If you are successful at being released
4 at 85 percent you still would be required to serve and
5 complete a two-year community supervision program which
6 is basically probation for two years, you understand
7 that?

8 MR. HUGER: Yes, sir.

9 THE COURT: The only difference with probation is
10 if you violate that two-year community supervision you
11 can be returned to prison in increments up to one year
12 until you satisfy the remaining portion, which would be
13 basically about 4.75 years. Do you understand that?

14 MR. HUGER: Yes, sir.

15 THE COURT: So in theory you could go back four
16 times realistically before and still when you come out
17 you'd still have to complete the two-year supervision.
18 Do you understand that?

19 MR. HUGER: Yes, sir.

20 THE COURT: Okay. I understand and we've talked
21 about this do you understand what a negotiated sentence
22 means?

23 MR. HUGER: Yes, sir.

24 THE COURT: And it's one of those unusual
25 situations. My options are either to accept it or reject

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1 it. I can't modify it in any respect.

2 MR. HUGER: Right.

3 THE COURT: It is your desire now for me to accept
4 that. And I understand we can do the math that's five
5 years off the top so to speak. But the major motivator
6 would be I would think from your standpoint is to avoid a
7 determination of whether it's three strikes or not, is
8 that correct?

9 MR. HUGER: Yes, sir.

10 THE COURT: And you understand that is an issue
11 that has not been technically resolved yet. You've got
12 the benefit of your lawyers involved discussions, the
13 State has indicated its discussion but that hasn't been
14 determined yet. Yes, sir?

15 MR. HUGER: So in other words what you're saying is
16 regardless they're going to have to investigate ---

17 THE COURT: --- no, no, no, no. Just let me
18 finish.

19 MR. HUGER: Okay.

20 THE COURT: That would not be done by me until a
21 jury were to find you guilty or you pled guilty at some
22 time during the trial because the negotiated plea is
23 we're taking that off the table.

24 MR. HUGER: Okay.

25 THE COURT: That's no longer there and that's

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1 significant to you.

2 MR. HUGER: Yes, sir.

3 THE COURT: That's what we're getting at but I want
4 you to understand the court has not made that ruling yet.
5 That's something that we would have to construe and
6 interpret. But you've had the benefit of very competent
7 counsel who has given you the benefit of their opinion,
8 is that correct?

9 MR. HUGER: Yes, sir.

10 THE COURT: Okay. And it's your desire to go
11 forward and for me to accept the negotiated sentence?

12 MR. HUGER: Yes, sir.

13 THE COURT: Are you today under the influence of
14 any alcohol or any medication?

15 MR. HUGER: I am on medication.

16 THE COURT: Okay. What type of medication?

17 MR. HUGER: I'm on Depakote.

18 THE COURT: How long have you been taking it?

19 MR. HUGER: For 13 months. I'm on Remeron and
20 Vistaril.

21 THE COURT: And those you've been taking for 13
22 months as well?

23 MR. HUGER: Yes, sir.

24 THE COURT: Did you take it as prescribed?

25 MR. HUGER: Yes.

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1 THE COURT: You have responded to me and we've had
2 discussion it doesn't affect your ability to consider or
3 reason does it?

4 MR. HUGER: I can't answer that question ---

5 THE COURT: --- well I mean you're able to function
6 pretty well at least from my observation. You've
7 responded to my questions very articulately and very
8 clearly, is that fair to say?

9 MR. HUGER: Yes, sir.

10 THE COURT: And you've understood all my questions?

11 MR. HUGER: Yes, sir.

12 THE COURT: And you've given me truthful and
13 complete answers to all my questions thus far?

14 MR. HUGER: Yes, sir.

15 THE COURT: And you asked me to have opportunities
16 to add certain things and to talk with your lawyers, have
17 you not?

18 MR. HUGER: Yes, sir.

19 THE COURT: So you've made some decisions going
20 forward is that correct -- well in the past and you made
21 your decision going forward.

22 MR. HUGER: Yes, sir.

23 THE COURT: Are you comfortable with your decision?

24 MR. HUGER: Yes, sir.

25 THE COURT: Okay. Let me say this to you. I've

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1 said this over the years and it's a question that I have
2 to ask in my opinion for me is I have to be sure that the
3 person who is asking me and it's -- listen as a human
4 being what I'm about -- I'm saying you're asking me to
5 put you in jail for 25 years. And I understand that's
6 not something I would want to do and I know that's not
7 what you want to do necessarily. But given everything
8 that's what you want me to do, is that correct?

9 MR. HUGER: Yes, sir.

10 THE COURT: And that's your choice?

11 MR. HUGER: Yes, sir.

12 THE COURT: How do you plead, sir?

13 MR. HUGER: At this time I would like to plead
14 guilty.

15 THE COURT: Okay. You say at this time you
16 understand I am going to be relying on that so if you
17 change your mind tomorrow it's too late.

18 MR. HUGER: Yes, sir.

19 THE COURT: You agree with that?

20 MR. HUGER: Yes, sir.

21 THE COURT: Okay. Are you satisfied with your
22 lawyers?

23 MR. HUGER: Yes, sir.

24 THE COURT: And let me say to you because we've had
25 discussions you wanted to get one. When I ask that

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1 question I don't mean that you've liked everything that
2 they've told you but you mentioned that you Ms. Proctor
3 you said you don't question her legal ability and you
4 haven't indicated you have any questions about Ms. Van
5 Pala's ability, is that correct?

6 MR. HUGER: They're good lawyers.

7 THE COURT: Okay. You may not have agreed on
8 everything and that's okay. But you believe that they've
9 given you solid advice?

10 MR. HUGER: Yes, sir.

11 THE COURT: And you're comfortable with their
12 advice?

13 MR. HUGER: Yes, sir.

14 THE COURT: Okay. Solicitor, other than all these
15 other charges that potentially were there other than
16 those being removed there are no other -- this is the
17 only agreement, is that correct?

18 MR. CORVEY: Yes, sir. And I'll nol pros my
19 additional pending indictments right now.

20 THE COURT: Right. So basically is that your
21 understanding Mr. Huger this will clear the record so to
22 speak for you in this circuit?

23 MR. HUGER: Yes, sir. Will it also -- so in the
24 future would there be any additional charges added?

25 THE COURT: Not out of this incident. This is it.

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1 Everything is gone. And you've heard me rule. I can't
2 rule on it but I can tell you if they brought a fed
3 charge against you now I think the feds would throw that
4 out. I really do.

5 MR. HUGER: One more thing.

6 THE COURT: Yes, sir?

7 MR. HUGER: The charges I have in Georgia?

8 THE COURT: I don't have anything to do with those.
9 Now and as I understand you're on probation in Georgia?

10 MR. HUGER: Yes, sir.

11 THE COURT: I can't promise you what Georgia is
12 going to do. I know what -- for no benefit other than to
13 tell you what this judge would have done because I've
14 done it before in my career. If a probation violation
15 came forward and the defendant was serving time in
16 Georgia I'd end the probation is what I would do. But I
17 can't promise you and I'm not promising or representing
18 to you what Georgia because they have a right to wait for
19 you to get out and then present it to you, sir.

20 MR. HUGER: Yes, sir.

21 THE COURT: Of course I don't know about Georgia's
22 probation. They would have to serve you with a violation
23 in South Carolina to extend it beyond a period of time.
24 But I'm not commenting because I don't know anything
25 about Georgia law, okay.

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1 MR. HUGER: Yes, sir.
2 THE COURT: And you're not relying on any
3 representation about what Georgia is going to do are you?
4 MR. HUGER: No, sir.
5 THE COURT: Okay. Ms. Proctor, you and Ms. Van
6 Pala have discussed this matter with your client?
7 MS. PROCTOR: Yes, Your Honor.
8 MS. VAN PALA: Yes, Your Honor.
9 THE COURT: And he has been advised of his rights?
10 MS. PROCTOR: Yes, Your Honor.
11 MS. VAN PALA: Yes, Your Honor.
12 THE COURT: He understands fully the consequences
13 of his decision here today?
14 MS. PROCTOR: Yes.
15 MS. VAN PALA: Yes, Your Honor.
16 THE COURT: Do you concur with his decision to
17 enter the guilty plea based on your investigation?
18 MS. PROCTOR: I definitely do, Your Honor.
19 THE COURT: Ms. Van Pala?
20 MS. VAN PALA: Yes, Your Honor.
21 THE COURT: And he understands -- well, I'm going
22 to ask him. Is that correct Mr. Huger that they have
23 advised you fully the rights you are relinquishing and
24 the consequences of your decision here today?
25 MR. HUGER: Yes, sir.

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1 THE COURT: And you understand that one of the
2 things that a guilty plea does if I accept your plea you
3 waive your right to challenge my rulings previously
4 rendered.

5 MR. HUGER: Yes, sir.

6 THE COURT: That is the admissibility of the
7 statement and the identification.

8 MR. HUGER: Yes, sir.

9 THE COURT: The only thing that you would have the
10 right to appeal and you certainly have a right to appeal
11 this and I'm not advising you how soon you have to file
12 it; your lawyers will do that, but really the only thing
13 that you will be able to challenge now is that you didn't
14 understand what you were doing and it was not a freely,
15 voluntary plea, do you understand that?

16 MR. HUGER: Yes, sir.

17 THE COURT: There is nothing happening with you
18 right now that would give you any concern about your
19 decision, is that correct?

20 MR. HUGER: No, sir.

21 THE COURT: This is your decision ultimately, is
22 that correct?

23 MR. HUGER: Yes, sir.

24 THE COURT: And you're being truthful in everything
25 you're responding to me and you understand I am going to

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1 be relying on your responses?

2 MR. HUGER: Yes, sir.

3 THE COURT: And you want me to do that?

4 MR. HUGER: Yes, sir.

5 THE COURT: Okay. Obviously, you will not have a
6 jury trial, do you understand that?

7 MR. HUGER: Yes, sir.

8 THE COURT: And as we discussed earlier the State
9 would have to prove you guilty beyond a reasonable doubt.
10 You don't have to prove or disprove anything, do you
11 understand that?

12 MR. HUGER: Yes, sir.

13 THE COURT: Your lawyers would have a chance you
14 would have a chance to see and hear the witnesses. You
15 could talk with them about questions they could challenge
16 that testimony as they've done here today, do you
17 understand that?

18 MR. HUGER: Yes, sir.

19 THE COURT: We call that the right of confrontation
20 and do you realize you are giving up that right by
21 entering this plea?

22 MR. HUGER: Yes, sir.

23 THE COURT: Do you also understand that you're
24 giving up a very valuable right to remain silent?

25 MR. HUGER: Yes, sir.

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1 THE COURT: Because you're admitting your guilt and
2 I'm relying on that and you want me to rely on your
3 admission, is that correct?

4 MR. HUGER: Yes, sir.

5 THE COURT: Have there been any threats made to you
6 sir to get you to plead guilty?

7 MR. HUGER: No, sir.

8 THE COURT: Other than the promises of letting you
9 plead to one charge and saying the court can only
10 sentence you to 25 years and giving up the right to
11 pursue at least for this charge a life without parole do
12 you understand that this would then set and there would
13 be another one when you are released, another serious
14 offense you clearly are jeopardizing that one by this one
15 because now we have three in this state, do you
16 understand that?

17 MR. HUGER: Yes, sir.

18 THE COURT: But other than those promises there
19 have been no other promises made to you?

20 MR. HUGER: No, sir.

21 THE COURT: I think I know the facts. We've heard
22 the testimony. Anything you want to supplement other
23 than the testimony that was given concerning his
24 statement and of course the observation of the detective?

25 MR. CORVEY: Nothing necessary. I believe I've

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1 already given Your Honor his records. So I don't think
2 there is anything further to be said.

3 THE COURT: Let's say because it's not necessary
4 now because that right of -- the waiver is going to be, I
5 mean the appeal, there is no appeal issue. But for the
6 record I made a little note to myself let's make sure the
7 video that I viewed is the video that everybody knew was
8 going to be presented.

9 MS. PROCTOR: Yes, sir.

10 THE COURT: Because clearly there was no form
11 showing where he went through the rights but that's on
12 that video and I saw that and that was the video. They
13 didn't put it in here but we all knew that that -- and
14 the transcript I think you provided me the transcript.

15 MS. PROCTOR: Correct, Your Honor.

16 THE COURT: And that's what I saw.

17 MS. PROCTOR: Correct.

18 THE COURT: So that was clearly what was going to
19 be presented to a jury.

20 MS. PROCTOR: Yes, sir.

21 THE COURT: Okay. I wanted to be sure of that.
22 So those facts are correct and the officer's, basically
23 the officer's recitation of what transpired while he was
24 in the bank standing next to you is correct?

25 MR. HUGER: Yes, sir.

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1 THE COURT: Okay. Anything else? Let me do this
2 first. I find that first of all Mr. Huger has had the
3 benefit of very competent counsel. I find that Mr. Huger
4 has been extremely straightforward throughout this entire
5 matter really, including reviewing his responses and
6 discussions on this video. I find that he obviously has
7 demonstrated by his response he fully appreciates the
8 gravity of what we are doing today. He fully understands
9 that. He's had the benefit of very competent counsel who
10 have already demonstrated their skills in this proceeding
11 thus far and that's just the beginning because they would
12 be prepared to handle it further if necessary at a trial.

13 I find that he is satisfied with their legal advice
14 and legal representation. There may be some differences
15 of opinion about certain things but it's clear that it's
16 his desire that I accept and impose the negotiated
17 sentence in this case. I find that he has made this
18 decision freely, voluntarily, knowingly and
19 intelligently. Is there anything else you wish to add?

20 MR. CORVEY: There's nothing further from the
21 State, Your Honor.

22 THE COURT: Ms. Proctor and Ms. Van Pala, I'll be
23 happy to hear from you both.

24 MS. PROCTOR: Thank you, Your Honor. Just a little
25 bit about Sheldon. He is 41 years old. He graduated

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1 high school -- he has his GED. He also has two years of
2 college. He has received -- he's been working and he has
3 a lot of certificates in plumbing, engineering work,
4 carpentry, electrician; he has a lot of skills. I had
5 him evaluated before this and I think what they found out
6 is he has some depressive mood disorders but his problem
7 is cocaine dependency.

8 I have spoken with him; I've spoken with his Mom.
9 We've spoken a lot about this. As a matter of fact he
10 even during his interview was very impressive. He was in
11 the room for four hours but the federal agents spoke to
12 him for about an hour and half and they had a very
13 intelligent conversation. And Sheldon basically, parts
14 that you haven't heard that weren't relevant to this, he
15 told the police officers about so many drug deals in
16 Mount Pleasant and actually I think helped them a lot.
17 He told them where he bought his drugs, who he went with;
18 so he did cooperate with the federal agent.

19 At first it did from the beginning of the interview
20 sound like it might go federal from the agent but he goes
21 if you go state and they talked about time and they
22 talked maybe two to 25 years. But he fully cooperated
23 with them. As a matter of fact after the two officers
24 that testified left they sent in drug agents and he spent
25 another hour which had nothing to do with but cooperating

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1 with the police force of Mount Pleasant I think it was
2 explaining to them about other drug deals. So he did
3 fully cooperate as I said with the police. We have
4 always believed, we've watched the video over and over
5 and slowed it down that he never had a weapon. And I
6 think that when he was talking to the federal agent he
7 said I didn't have a weapon and I think the agent
8 believed him because he never asked him again.

9 The video shows he had his hand behind his back and
10 it might have looked like he did, that would have been a
11 jury question, but he's always told me I never did. This
12 was something I think he has a drug problem and on that
13 day he needed drugs. He went in. He -- it was so fast;
14 it was a minute and a half.

15 And once the lady I think gave him enough money for
16 him to get drugs he was like thank you ma'am and out he
17 ran and unfortunately we're in this situation today. He
18 has been in jail for 413 days, which is a long time.

19 THE COURT: Yes, it is.

20 MS. PROCTOR: And I'm glad we came to this
21 resolution I think because of the video, his confession
22 unfortunately the eyewitness being a police officer he
23 was standing next to I just don't think we could have won
24 this trial. I know that part of I think the hesitation
25 that we've had with him is he thinks -- he's sort of

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1 under the impression that if he could tell the jury about
2 his drug problem that would maybe negate some things.
3 And I said well unfortunately the law doesn't care about
4 that and the jury wouldn't be able to take that into
5 consideration.

6 Unfortunately that yes it was drugs that made you do
7 that that is not a defense. And I think that's where he
8 and I sort of had this bumping of heads. He's always
9 been honest with me and honest to the police, very polite
10 to the police officers. I'm glad we came to this
11 conclusion and I just would ask you accept the 25 years.
12 And I don't know if his mom wants to address you briefly.

13 THE COURT: Good afternoon, ma'am.

14 MS. HUGER: Good afternoon.

15 THE COURT: If you would give me your full name for
16 the record please, ma'am.

17 MS. HUGER: Yes, sir. It's Lillian Huger.

18 THE COURT: Yes, ma'am?

19 MS. HUGER: I just want to say this sir. I would
20 like to say to you sir about Sheldon. He has made some
21 mistakes like we all had. I was too scared to try drugs
22 and stuff. He is one of three boys that I raised. When
23 I look at him I still see a fine young man that made some
24 very bad choices. And I never gave up on him. He is so,
25 so very bright, so very bright. I wish every since I

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1 heard that he was on drugs and talked to me about it that
2 I could have taken that drug addiction from him because
3 he was not that person prior to the addiction. I heard
4 the lawyer mentioned about how you know Sheldon has
5 confessed. But I will tell you this since the crack
6 addiction was the catalyst that led to all of the
7 offenses throughout his life he has always admitted to
8 stuff he do. Never any fighting just I did it and I'm
9 sorry. Of course as a mother I'm so very sorry, Sheldon.
10 I love you dearly. It's going to be all right; I promise
11 you. It's going to be all right.

12 And I was kind of frustrated because this whole
13 courtroom thing makes me so nervous. I think they tried
14 to do the best they can given what they were dealing
15 with. Your record is really not a true definition of who
16 you are. It is not my dear, it's not. If you weren't on
17 drugs and did these things then I would be like you know
18 what? Something is very, very wrong with you.

19 But I'm going to be here for you and James and
20 Kevin. We are going to be here for you because we know
21 you're better. I just thank God that you're not dead and
22 thank God nobody got hurt and thank God you didn't go in
23 that place with a gun. I really thank God. You're going
24 to be okay. You're going to be all right.

25 THE COURT: Thank you Ms. Huger.

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1 MS. HUGER: Thank you, Your Honor.

2 MS. PROCTOR: And I think Sheldon wanted to address
3 you too.

4 THE COURT: Yes sir, Mr. Huger?

5 MR. HUGER: I appreciate everything y'all are
6 doing. I don't know for many years from a kid I've been
7 struggling with a lot of things. And it's not an excuse;
8 it's just my reality you know. I picked up drugs and we
9 all know there is a war on drugs. We know the effects of
10 it and how it can destroy you. I just don't understand
11 how I could never stop. You know some of the crimes I
12 did back in the days was just things that was unheard of.
13 And I did my time for it just like I got to do for this.
14 And I'll keep my head up because it's not the end of the
15 world.

16 But you know y'all people are some very smart people
17 and y'all got power. And this is just my opinion and it
18 doesn't have to mean anything other than that but this
19 state of South Carolina I believe they have about 29
20 prisons; maybe more. There is a big recidivism rate and
21 probably over 90 percent of the people that go to prison
22 is drug related in some form. So I don't know who y'all
23 could talk to or what y'all could get started but there
24 needs I think in my opinion there needs to be places
25 where people can get help. If you're going to give me

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1 life give it to me in a place where I can receive
2 rehabilitation not in a place where it is just convicts,
3 convicts; you know people who just don't care. But
4 that's just my opinion.

5 THE COURT: Well I'll tell you this Mr. Huger there
6 is one that shares your opinion and I think there are
7 others but I do and I've shared it for a long time. And
8 I've made statements one day we as a people are going to
9 have to answer for something. And I don't need to preach
10 but the Bible talks about when you've done it to the
11 least of these you've done it to me. And we're going to
12 have to answer why we didn't do a better job taking care
13 of people who made a mistake.

14 And I'm praying. I'm hoping and praying and I'm
15 trying right now to get involved in a project that I hope
16 they will -- because the people that I had the pleasure
17 of working with they're focusing on that. That table
18 over there [indicates] and I know and understand you
19 wanted a better deal but I commend them. They didn't
20 have to do this.

21 MR. HUGER: That's right.

22 THE COURT: They didn't have to do this; they had
23 you. But they believe that there is hope for you too and
24 I do too. And I share your mother's -- I understand and
25 I'll tell you this. I know you've already seen this. I

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1 wish my mother was still alive but my mother used to tell
2 me son, if you were to stab me with a knife and pulling
3 it out you cut your hand I'd worry about how bad your cut
4 was. And I'm going to tell you something. I'm a father
5 and I'm a grandfather and I love my children and my
6 grandchildren but I can't fathom the depth and breadth of
7 a mother's love; it is unbelievable. It's incredible
8 and you just witnessed it and we know that.

9 MR. HUGER: Yes, sir.

10 THE COURT: And I agree with her, sir. You're not
11 junk and don't you ever think of yourself as junk; you're
12 not. And don't think of yourself as weak because you
13 suffer an addiction. It's the byproduct of your choices
14 but you can deal with that. I wish I could promise you
15 you'd get the help. I hope before you're out this state
16 will wake up. I think there is a movement underfoot
17 right now to do that.

18 And I see it and I see it with programs like Turning
19 Leaf and other programs who are getting people and
20 getting them to understand something; you matter. It
21 doesn't matter what you've done; you count. And if we
22 can start making people understand that -- a man made a
23 lot of money off of this and we can agree or disagree
24 with him politically but I don't think we can disagree
25 with this, the audacity of hope. What hope can do and

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1 it's amazing.
2 MR. HUGER: Yes, sir.
3 THE COURT: And I want you to hang on to that hope.
4 MR. HUGER: Thanks.
5 THE COURT: You bet. I'll accept the
6 recommendation and I meant what I said. Thank you all
7 for you showing what I -- it's a pleasure to work, to be
8 on y'all's team; yours as public defenders and yours as
9 State prosecutors. We're trying to do what is just and
10 fair. And I commend the officer for his willingness to
11 do that and for his diligence in this case as well.
12 Thank you for what you do for all of us, sir.
13 The sentence of the court is 25 years. I give you
14 credit for 413 days. Good luck to you, sir.
15 MS. PROCTOR: Thank you, Your Honor.
16 MR. CORVEY: Thank you, Judge.
17 THE COURT: Thank you, Mr. Huger.
18 MS. VAN PALA: Thank you, Your Honor.
19 THE COURT: Thank you, Ms. Van Pala.
20 *****END OF TRANSCRIPT OF RECORD*****
21
22
23
24
25

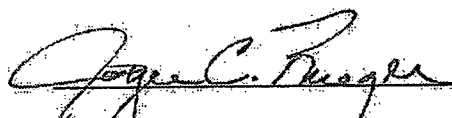
State v Sheldon Huger
Certificate of the Court Reporter
February 1, 2017

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 1st day of February, 2017.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

October 19, 2017


Joyce C. Rueger, CVR-M
Court Reporter

Certified Transcript provided to Office of the Attorney
General

FORM 5

2017-CP-10-4361

STATE OF SOUTH CAROLINA

COUNTY OF

Full name and prison number (if any) of Applicant,

Sheldon Lamar Huger-303793

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2017 AUG 25 PM 12:51
JULIE K. ARMSTRONG
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Inst. P.O. Box 205 Ridgerville, S.C. 29472
2. Name and location of Court which imposed sentence Charleston Co. 100 Broad St. Charleston, S.C.
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Entering into a financial inst. w/intent to steal.
 - (b) Resisting arrest
 - (c)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2-1-17 - 25 year sentence - 2 years community supervision
 - (b)

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: ^①I did not attend a preliminary hearing ^②Ineffective Assistance of Counsel ^③Mental Health disabilities ^④My case prejudiced from State vs Muldrow and State vs Gillespie, Travis ^⑤I was under the influence of narcotics when I gave initial statement. ^⑥My plea arrangement was enhanced to Armed Robbery ^⑦and should have been lessened to strong Armed Robbery - I did not have a weapon.

- (a) _____
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) On the date of preliminary hearing, I did not attend
 (b) 2nd page →
 (c) I am taking Depskote, Vistiril, and Remeron for Mental Health disabilities →

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
- i. _____
 - ii. _____
 - iii. _____

11. b.-cont.; My initial charge was incorrect and never challenged by my counsel, Ms. Lorelle Proctor. Also the solicitor in my case enhanced my charge to Armed Robbery which was incorrect supported by the case State vs. Muldrow which states that a person must show a weapon or the representation of a weapon in order to support Armed Robbery. My initial charge should have been lessened to Strong Armed Robbery and Ms. Proctor never challenged this error. *Next page

c. cont.; I have been treated in West Ashley Mental Health Center for major depression, paranoia, mood and mind stabilization and am currently being housed at Lieber Corrections in Edisto B unit which is for mental health patients.

d. My case was prejudiced apart from the State vs. Muldrow case, State vs. Travis Gillespie, who in fact robbed the very same bank as myself, who also has a lengthy record and drug abuse history, and State vs. Quarter. All of these men robbed one or more banks with a note threatening harm and all received either probation or strong armed robbery. All of these men were white individuals that were defendants in the Charleston County Court System.

e. I never received a drug test after notifying the interviewing officers and FBI agent that I had a drug problem which would have helped

- to prove that I was under the influence of narcotics during the commission of the crime as well as the initial interview with aforesaid officers. Also, I am willing to take a polygraph test to show that I was in fact under the influence of narcotics during both instances.

* II

b-cont. - During the pre-trial hearing my counsel suppressed parts of my initial statement to police officers that spoke of me having a drug abuse problem because they, (my counsel), said we don't want the jury to hear about my drug problem because it would allow the jury to develop a prejudice towards me. However, this information of my drug addiction and abuse which lead to the crime would potentially show the jury that I, the defendant, was under the influence during the commission of the crime and was under the influence when I, the defendant, gave a statement to police officers. Therefore I was lead on by police officers and coerced to make a statement thinking that the officers would speak in my behalf and help me to get a better deal from the state.

Also, since my counsel suppressed the wrong part of my statement, I was led to believe that I could not win at trial and I would receive a life sentence for the enhanced charge of Armed Robbery or the three strike law for the initial charge of Entering a financial inst. w/intent to steal. I was

Cont.

* 11. b - therefore railroaded to take a plea of 25 years which is only 5 years from receiving the max sentence on the initial charge of Entering a Financial Inst... I never received a plea deal from the initial charge which would have been reduced to strong armed robbery. My charges were enhanced from the initial charge to Armed Robbery which was incorrect because I never had a weapon or showed the representation of a weapon. I was under the influence of mental health medication during the pre-trial hearing where I was forced to take a negotiated plea of 25 years in fear of a life sentence at trial. My counsel never challenged any of the aforesaid issues and made several statements to me that because of my charge in 2003 involving a family member she, my counsel Ms. Proctor, would not fairly represent me in court. I wrote the Bar Assoc., the NAACP, the ACLU, the Attorney General, and the disciplinary counsel of the Supreme Court. Ms. Proctor always had her own proclivities about me and pushed for me to receive such a stiff penalty when the correct charge of Strong Armed Robbery would have been correct because I never had a weapon which would make the charge non-violent.

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is my first PCR attempt.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? NA
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Lorelle Proctor - 101 Meeting St, Charleston, S.C. 29401
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Ms. Lorelle Proctor at arraignment and plea, sentencing.
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

That my sentence be overturned or reduced to strong armed robbery which will give me ten years or less.

20. Are you now under sentence from any other court that you have not challenged?

Spalding County Court, Griffin, Georgia

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Sheldon Huger, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 8th
day of August, 2017.

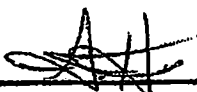
Lucyann Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Sheldon Huger
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this
8th day of August, 2017.

Shirlean Bryant

Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
SHELDON HUGER,	)	
S.C.D.C. No. 303793	)	Case No. 2017-CP-10-4361
Applicant,	)	
	)	
v.	)	RETURN
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

In response to the post-conviction relief application filed August 25, 2017, Respondent would show this Court:

I.

Sheldon Huger ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of Charleston County Clerk of Court.

On December 16, 2015, Applicant entered the First Citizens Bank located at 5090 Dorchester Road in Charleston County and approached the teller counter. He passed a note to the teller indicating he was armed with a gun and demanding money. The teller acknowledged the note and began removing monies from her drawer until Applicant instructed her to stop. The teller then placed the monies on the counter and Applicant took the sum of currency. While this was occurring, Detective Riedel of the North Charleston Police Department was at the bank conducting other business and observed Applicant's actions. Detective Riedel approached Applicant, announced himself as an officer, and asked Applicant to stop. Applicant refused to comply and took off on foot. A foot chase ensued, after which Applicant was apprehended nearby. Detective Riedel positively identified Applicant, who had the currency on his person at

the time of arrest. During its August 2016 term of court, the Charleston County Grand Jury indicted Applicant for entering a bank with intent to steal (2016-GS-10-4915).

Lorelle Proctor, Esquire, of the Charleston County Public Defender's Office, represented Applicant. Assistant Solicitor Ted Corvey prosecuted the cases. On February 1, 2017, Applicant appeared in the Charleston County Court of General Sessions before the Honorable R. Markley Denis, Jr., circuit court judge, proceeded to trial. Following pre-trial hearings, Applicant elected to forego his right to trial and entered a guilty plea as indicted. Pursuant to negotiations with the State, Judge Dennis sentenced Applicant to twenty-five years imprisonment. Applicant did not appeal his guilty plea or sentence.

II.

In his *pro se* application for post-conviction relief, Applicant alleges he is being held in custody unlawfully due to the following allegations:

1. "I did not attend a preliminary hearing;"
2. "Ineffective assistance of counsel;"
3. "Mental health disabilities;"
4. "My case prejudiced from State vs. Muldrow and State v. Gillespie, Travis;
5. "My plea arrangement was enhanced to armed robbery and should have been lessened to strong armed robbery-I did not have a weapon."

In his attached pages, Applicant gives facts to support these allegations by alleging what counsel did or did not do adequately in regard to each of these allegations. Therefore, respondent interprets all of these allegations as ineffective assistance of counsel.

Attached herewith and incorporated herein are the records of the Charleston Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the plea transcripts. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Applicant alleges various claims of ineffective assistance of counsel. Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that,

but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SHELDON LEMARC HUGER, #303793

Applicant,

vs

STATE OF SOUTH CAROLINA,

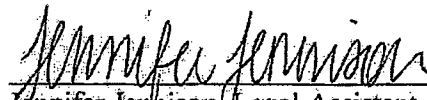
Respondent,

IN THE COURT OF COMMON PLEAS
2017-CP-10-4361

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Kristian Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this the 30th day of October, 2017.


Jennifer Jennison, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Sheldon Huger,	)	CASE NO. 2017-CP-10-04361
	)	
APPLICANT,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
State of South Carolina,	)	
	)	
RESPONDENT.	)	
	)	

March 21, 2019

Charleston, South Carolina

B E F O R E:

The Honorable Jennifer McCoy

A P P E A R A N C E S:

Tommy Thomas, Esquire
For the Applicant

Benjamin H. Limbaugh, Esquire
For the Respondent

Phyllis Norton, CVR-Master, *Nationally Certified Verbatim Court Reporter*
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

(AW) - DENOTES APPLICANT WITNESS

(RW) - DENOTES RESPONDENT WITNESS

PCR HEARING

-- 03

EXHIBITS - None ProfferedWITNESSES(RW) Sheldon Huger:

Direct Examination by Mr. Thomas -- 05

Cross-Examination by Mr. Limbaugh -- 29

Redirect Examination by Mr. Thomas -- 33

(RW) Lorelle Proctor by Mr. Limbaugh:

Direct Examination by Mr. Thomas -- 34

Cross-Examination by Mr. Limbaugh -- 40

Redirect Examination by Mr. Thomas -- 44

Recross-Examination by Mr. Limbaugh -- 44

CERTIFICATION OF TRANSCRIPT

-- 50

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: Good morning.

2 MR. THOMAS: Good morning, Your Honor.

3 THE COURT: How are you?

4 MR. THOMAS: Good.

5 THE COURT: Fine. Well, would you state your name for
6 the record, please, sir.

7 MR. THOMAS: Yes, ma'am. Tommy Thomas. I am the
8 attorney for Mr. Huger.

9 THE COURT: Good, Mr. Thomas. And when did you take over
10 this matter?

11 MR. THOMAS: I don't really remember, Your Honor.

12 THE COURT: Okay.

13 MR. THOMAS: We have had it for quite some time.

14 THE COURT: Okay.

15 MR. THOMAS: Yes, ma'am.

16 THE COURT: That is fine. And with you today you have
17 your client Mr. Sheldon Huger; is that correct?

18 MR. THOMAS: I do.

19 THE COURT: And he is present in court today.

20 And would the attorney from the Attorney General's Office
21 state his name for the record.

22 MR. LIMBAUGH: Benjamin Limbaugh.

23 THE COURT: Thank you very much

24 MR. LIMBAUGH: Attorney for the State.

25 THE COURT: All right. Mr. Thomas, I understand your

1 client has filed a PCR application. It looks like it was
2 initially filed back in August of 2017; is that correct?

3 MR. THOMAS: That is correct, Your Honor.

4 THE COURT: All right. I have just been handed up the
5 record from the Attorney General's Office. It appears that he
6 pled guilty to

7 MR. THOMAS: I believe it was entering a bank with intent
8 to steal, Your Honor.

9 THE COURT: I see that. Okay. I just wanted to double
10 check that I was reading that correctly. Entering a bank with
11 intent to steal. And he received a sentence of 25 years from
12 Judge Dennis which was -- at the time he received credit for
13 413 days; is that correct?

14 MR. THOMAS: That is correct, Your Honor.

15 THE COURT: All right. I am happy to hear your case on
16 PCR.

17 MR. THOMAS: Your Honor, if I can beg the court's
18 indulgence just for one second.

19 THE COURT: Sure.

20 (WHEREUPON, pause for a moment.)

21 MR. THOMAS: Your Honor, if it please the court we would
22 call Mr. Huger to the stand.

23 THE COURT: Okay. That would be fine.

24 Sir, if you don't mind making your way up to that witness
25 stand over there the clerk will swear you in.

1 (WHEREUPON, the witness was duly sworn.)

2 THE CLERK: And for the record please state your full
3 name spelling your last.

4 APPLICANT HUGER: My name is Sheldon Huger. H-U-G-E-R.

5 MR. THOMAS: Your Honor, if it please the court.

6 THE COURT: Yes, sir.

7 **DIRECT EXAMINATION BY MR. THOMAS OF SHELDON HUGER:**

8 Q. Mr. Huger, you are currently with the South Carolina
9 Department of Corrections?

10 A. Yes, sir.

11 Q. And you are serving a sentence for what, sir?

12 A. Entering a bank with the intent to steal.

13 Q. Okay. And do you remember roughly when you were
14 arrested?

15 A. December the 15th of 2015.

16 Q. All right, sir. And what were you initially charged
17 with; were there other charges other than the entering the
18 bank?

19 A. Yes, sir, there was a resisting arrest also.

20 Q. All right. And how about was there an armed robbery?

21 A. That was an enhancement after I had already received the
22 initial charge. That came several months after me being
23 incarcerated in the Charleston County jail.

24 Q. Okay. So you were facing prosecution of the entering
25 into the bank, armed robbery, and resisting arrest?

- 1 A. Yes, sir.
- 2 Q. All right, sir. And was this a trial or a plea?
- 3 A. I took a plea.
- 4 Q. Okay, but you were ---
- 5 A. I was supposed to go to trial.
- 6 Q. Okay. Now you are serving what kind of sentence?
- 7 A. Twenty-five years.
- 8 Q. And is that 85 percent?
- 9 A. Yes, sir.
- 10 Q. When is your max-out date?
- 11 A. 2038.
- 12 Q. All right. Mr. Huger, you are also facing a life without
- 13 a parole, what we call an LWOP?
- 14 A. Yes, sir.
- 15 Q. Okay. And were you ever given notice of LWOP?
- 16 A. No, sir.
- 17 Q. All right.
- 18 A. I don't believe I was, no, sir.
- 19 Q. When did you become aware that you could have -- that the
- 20 State may have been seeking a life without parole?
- 21 A. At the pretrial hearing.
- 22 Q. Okay. And is that -- there were pretrial motions that
- 23 were made?
- 24 A. Yes, sir.
- 25 Q. Okay. Now we have talked about post-conviction relief,

1 and you understand that what you are asking for today is
2 basically that your conviction be set aside?

3 A. Yes, sir.

4 Q. And you would either be facing a new trial or a plea?

5 A. Yes, sir.

6 Q. You understand that you have certain exposure in that all
7 of the charges could be reinstated?

8 A. Yes, sir.

9 Q. And potentially you could if you went back to trial get
10 more time?

11 A. Yes, sir.

12 Q. Including the life without parole ---

13 A. Yes, sir.

14 Q. --- if that was possible? Given that, you are willing to
15 accept the risk today?

16 A. Yes, sir.

17 Q. And you wish to go forward with your post-conviction?

18 A. Yes, sir.

19 Q. All right. Mr. Huger, tell us a little bit about just
20 for our purposes a little bit about this case. What do they
21 say that you did?

22 A. Well, they are alleging that I entered into a financial
23 institution and robbed the bank with a note without a weapon
24 and got money and resisted arrest. And they are saying that,
25 you know, ---

1 Q Okay.

2 A. --- I was ---

3 Q. Were you apprehended in the bank?

4 A. No, sir.

5 Q. Okay. And where were you apprehended?

6 A. Approximately one square block away from the bank at a
7 convenience store.

8 Q. All right, sir. And you were arrested by I would assume
9 a police officer?

10 A. Yes, sir.

11 Q. Okay. And there were certain allegation that that police
12 officer was in the bank at the time of the robbery?

13 A. No, sir, not the actual police officer that made the
14 arrest. The police officer that made the arrest he made the
15 arrest based on an identification that was given to him from
16 dispatch.

17 Now the person that ID'd me from the bank was a secret
18 service agent. And obviously he was the one that gave the
19 description to dispatch for the arresting officer to apprehend
20 me at the bank.

21 Q. All right, sir. And was there an identification?

22 A. On-sight identification, yes, sir, there was.

23 Q. And you were I guess ID'd at that time ---

24 A. At that point, yes, sir.

25 Q. --- as a potential perpetrator of this crime?

1 A. Yes, sir.

2 Q. Okay. And was there ever any kind of photo lineup or any
3 other identification, out-of-court identification?

4 A. No, sir.

5 Q. Now you were arrested and I guess you were detained in
6 the Detention Center?

7 A. Yes, sir.

8 Q. And did you make bond?

9 A. No, sir.

10 Q. How long were you in the county jail?

11 A. Approx- -- I can't remember exactly. I think it was
12 approximately less than a year -- or 413 days. A little more
13 than a year.

14 Q. Okay. And as far as representation, you were appointed
15 an attorney or did you hire an attorney; or how did that
16 happen?

17 A. I was appointed an attorney at that time. We were
18 looking into getting an attorney; but, you know, the financial
19 situation was not there at the time so I stuck with the
20 appointed attorney.

21 Q. And who was that?

22 A. Ms. Lorelle Proctor, ---

23 Q. Okay.

24 A. --- Esquire.

25 Q. All right. And she worked for the Public Defender's

1 Office?

2 A. The Public Defender's Office, yes, sir.

3 Q. Okay. Now when you were in the county jail you were not
4 able to go to her office; is that correct?

5 A. That is correct.

6 Q. So that had to come to see you?

7 A. Yes, sir.

8 Q. And how many times did they come see you?

9 A. If I can remember correctly I believe I saw Ms. Proctor
10 about twice.

11 Q. All right, sir. And during that period of time were you
12 able to discuss your case with her?

13 A. Very briefly.

14 Q. Very briefly. How about as far as the discovery -- do
15 you understand what that term is, the what the evidence the
16 State has against you?

17 A. Vaguely. And she did discuss, you know, the paperwork
18 that -- you know, with the packet that came to me she did
19 discuss that with me. And it -- there was -- I was not really
20 informed 100 percent. I didn't understand totally, you know,
21 all of the ramifications or whatever it was behind everything.
22 And so it was

23 Q. Now you say you didn't understand. What do you mean by
24 that?

25 A. I just didn't understand everything I was facing or -- I

1 didn't understand why I was being -- that my charges was being
2 enhanced.

3 Q. Okay.

4 A. That was the big question, why they enhanced my charge
5 from entering into a bank with the intent to steal to armed
6 robbery and there was no weapon.

7 Q. Why were you concerned about the armed robbery?

8 A. Because if I was convicted of armed robbery with my
9 record that would have been a second most-serious charge. And
10 that would have given me a life sentence if I would have went
11 to trial and lost.

12 Q. With the LWOP?

13 A. Yes, sir. So now facing the armed robbery I was totally
14 terrified to go to trial. I had no choice but to take a plea
15 of 25 years. And I felt like I was railroaded into taking
16 that plea. I felt like I didn't get proper representation
17 because if -- I went into -- if I allegedly went into a bank
18 and put a note on the desk wouldn't that charge be like
19 something like strong-armed robbery? I mean I am just -- I
20 don't know.

21 Q. Okay. And I mean you have been pretty active in
22 preparation of your case ---

23 A. I have tried to study it, yes, sir. I don't know -- I
24 don't know the law. But, you know.

25 Q. And you actually talked about a case of State versus

1 Muldrow ---

2 A. Yes, sir.

3 Q. --- which is a South Carolina Supreme Court case from
4 2002?

5 A. Yes, sir.

6 Q. And you believe that that case is in your favor in
7 regards to the possession of a weapon?

8 A. Yes, sir. Because in that case, from what I read, the
9 perpetrator went into a convenience store and he placed a note
10 on the counter that said that he was trying to rob them and
11 that he had a gun. And he was arrested very quickly after
12 the incident. And after the arrest they was charged with
13 strong-armed robbery. Well, the DA looked at his record and
14 said, no, we are going to enhance it to armed robbery because
15 your note said that you had a gun?

16 Q. Right.

17 A. And they actually did convict him in -- what -- what do
18 you call it, circuit court. All right. They convicted him.
19 Well, he went back on appeal. And the appellate court in
20 response said that you cannot be convicted of an armed robbery
21 if you do not show a representation of a weapon, meaning you
22 have to show a physical weapon, a gun, a knife, a bat, stick,
23 or you have to stick your hand in a bag, your pocket, under
24 your shirt, you have to show a direct representation of a
25 weapon in order for it to be armed robbery.

1 Q. And I would not normally ask a client those questions,
2 but I know that you have been very active and you actually
3 pointed out this case to me.

4 MR. THOMAS: Your Honor, for the Court's indulgence, that
5 is 348 SC 264 is the site. And basically I think what it
6 comes down to is that the legislature did not intend armed
7 robbery to include a robbery committed with simply an
8 allegation of being armed.

9 THE COURT: Okay.

10 MR. THOMAS: Yes, ma'am.

11 THE COURT: Thank you.

12 Q. So in talking -- what I am curious about is how did you
13 prepare this case with your attorney. I mean, you know, you
14 have got your discovery. You gave a statement in this case
15 when you were arrested; is that correct?

16 A. Yes, sir.

17 Q. All right. And did you talk about that statement with
18 counsel?

19 A. Briefly we did talk about that statement. And we had a
20 dispute about it because she was trying to omit some of the
21 most significant parts of the statement, I thought that were
22 significant, for whatever reason. And I thought it was going
23 to make a big difference in the outcome of my case that if she
24 would have said those things or allowed them to be presented.
25 But, yes, I did make a statement.

1 Q. And what you were trying to do I think is to have that
2 statement suppressed to keep it from being -- from coming in
3 if you went to trial?

4 A. Yes, sir.

5 Q. Okay. And I think basically your argument for
6 suppression was that you were promised certain things ---

7 A. Yes, sir.

8 Q. --- as an inducement to make a statement?

9 A. Yes, sir.

10 Q. Okay. Now as far as there was also a video. Did you sit
11 down with your attorney and review that video?

12 A. No, sir.

13 Q. For the bank?

14 A. No, sir, I have never reviewed any videos.

15 Q. Okay. All right. And what was the theory of defense? I
16 mean I know that is another legal term, but how was your
17 attorney going to defend you; did you speak with her about
18 that?

19 A. My attorney out of her mouth word-for-word said, I am not
20 going to represent you because of your criminal history; you
21 have a bad criminal history and I am not going to represent
22 you. That was her word-for-word out of her mouth.

23 I wrote the ACLU. I wrote the State Bar Association. I
24 wrote the Disciplinary Counsel for the U.S. Supreme Court.
25 And they wrote me back and said I have to wait until after I

1 get convicted.

2 I had wrote the NAACP. I wrote several other agencies
3 about Ms. Proctor.

4 Q. And actually -- which kind of makes me jump forward just
5 a little bit. At the pretrial there were certain motions
6 made, and one of those motions I guess was by you to hire
7 another attorney?

8 A. Yes.

9 Q. Okay.

10 MR. THOMAS: Your Honor, just for the court's indulgence
11 I have -- I often just can cite these pages in the transcript.
12 I am not saying that we need to do them.

13 THE COURT: Okay.

14 MR. THOMAS: But it is better than having him read from
15 those pages. And that information is contained in Page 4,
16 Line 16 through 21, Your Honor. Just for the court's
17 information.

18 Q. And you had a discussion with the judge and at that point
19 you made a decision to continue?

20 A. Okay, I am not following you.

21 Q. All right. Okay. You made -- you said that you wanted
22 another attorney?

23 A. Right.

24 Q. And what happened as a result of you asking the court for
25 another attorney?

1 A. He told me no. He said you can -- I am not firing her.
2 He said that you don't get to pick who you want as your
3 attorney. And he didn't even give me the opportunity to
4 present a case. He said either you can represent yourself or
5 you can take Ms. Proctor. No, I'm sorry, he said either you
6 can take this plea or you cannot take the plea. And that is
7 just the bottom line.

8 Q. Did you want to represent yourself?

9 A. I didn't have any -- no, I didn't because I felt like she
10 did know more legal -- you know, she was a lawyer. But I
11 really didn't want her because ---

12 Q. But you had no confidence?

13 A. I didn't have any choice.

14 Q. Okay. All right. Now you were actually given a plea
15 offer; is that correct?

16 A. Yes, sir.

17 Q. And what was that plea offer?

18 A. Twenty -- the initial plea?

19 Q. Yes, sir.

20 A. The very first plea they gave me was 20 years.

21 Q. Okay. And then what was the next offer?

22 A. Twenty-five years.

23 Q. Why did it go up?

24 A. Because he said that I didn't -- I didn't -- they said
25 because I didn't take the first plea it was just going to go

1 up, it wasn't going to go back down. And then when we came to
2 the pretrial hearing he said -- that is when the DA was like I
3 am going to make one more offer to Mr. Huger and if he refuses
4 it then we are going to go to trial. And at that time I was
5 so afraid, you know, so I just went on ahead and took whatever
6 he offered. And he offered 25.

7 Q. Okay. Now you testified a few minutes ago about your
8 previous record, prior record. Is it that bad?

9 A. Yes, sir.

10 Q. Okay. And you have served time before?

11 A. Yes, sir.

12 Q. Okay. But in the position that you are in today you
13 don't believe or you do believe that they could have LWOP'd
14 you? I mean you were talking about serious and most serious.
15 Do you understand that?

16 A. Well, I understand it now. Yes, I believe that they
17 could have if they would have found me guilty on it.

18 Q. On the armed robbery?

19 A. Yes, sir.

20 Q. Okay. Now but there was a problem with the LWOP that
21 occurred at this pretrial, and that was because they
22 haven't -- they did not give you written notice; is that
23 correct?

24 A. Yes, sir.

25 Q. Okay. So if they had tried the case that day or the next

1 day they would have been precluded from attempting to get an
2 LWOP ---

3 A. Yes, sir.

4 Q. --- on you? Okay. And did that factor in at all with
5 your discussions with your attorney in regards to the plea or
6 trial?

7 A. Well, yes, I guess it -- because -- if I am understanding
8 correctly it would have changed the outcome of my sentence.

9 Q. Okay. And what I am trying to ask you -- and I.
10 apologize. You know, you elected to take a plea rather than
11 go to trial?

12 A. Right.

13 Q. And what I am asking about is how you made that decision.

14 A. I made that decision out of fear.

15 Q. Out of fear. Okay.

16 A. For -- not for getting -- because I did not want to get
17 the life sentence on the armed robbery charge.

18 Q. Did you understand that had they taken you to trial
19 outside of, you know, the notice period that the LWOP was off
20 the table, in other words you didn't have that exposure?

21 A. No, I don't understand that.

22 Q. You didn't understand that?

23 A. Right.

24 Q. Okay. All right. Now in the pretrial motions, do you
25 remember those?

1 A. Some of them. I think Dunno (ph).

2 Q. Okay. And there was a -- let's see. There was a Jackson
3 versus Denno hearing?

4 A. Okay.

5 Q. Okay. And, Your Honor, just for the court's information
6 that is on Pages 54 through 59 of the transcript.

7 Q. Did you understand that procedure?

8 A. No, sir.

9 Q. Okay.

10 A. Can you explain it to me a little bit?

11 Q. I can. And ---

12 MR. THOMAS: Your Honor, if I can get the court's
13 indulgence just for a second.

14 THE COURT: Okay.

15 (WHEREUPON, pause.)

16 Q. Your attorney was trying to basically suppress the
17 statement that you had made.

18 A. Okay.

19 Q. Okay. And I think she was making an argument that you
20 had been given certain incentives to attempt ---

21 A. Right, right, ---

22 Q. --- to make ---

23 A. --- right, right.

24 Q. --- you to confess. And what I am curious about is how
25 if any way these pretrial motions or the outcome of the

1 pretrial motions affected or had any implication on your
2 decision. You know, we are going back to the decision to plea
3 or trial. And did the Jackson versus Denno hearing did it --
4 did you understand it enough to have an effect upon your
5 decision?

6 A. Yes.

7 Q. Okay.

8 A. I understand what you are asking me.

9 Q. Yes.

10 A. Yes, it did have an effect. Because, like I said, if she
11 would have -- based on the incentives that they were trying to
12 offer me if I would have gave them information on whatever it
13 is that they were saying that they were going to do then the
14 out- -- the promise was made that they were supposed to change
15 the outcome of my sentencing.

16 Q. Did you -- did you give them information -- I mean other
17 than -- other information other than the bank robbery?

18 A. I didn't give them -- I mean I gave them information.
19 about some people that was in my hotel room.

20 Q. About drugs?

21 A. Yes.

22 Q. Okay. And did they help you?

23 A. No, they said that ---

24 THE COURT: Can we clarify who they is? I'm sorry ---

25 A. The FBI.

1 THE COURT: --- or the bank because we have ---
2 MR. THOMAS: Yes, ma'am.
3 THE COURT: --- a lot of moving parts, okay, ---
4 MR. THOMAS: Okay. Sure.
5 THE COURT: --- that I might not be ---
6 MR. THOMAS: I'm sorry.
7 THE COURT: --- aware of.
8 MR. THOMAS: Yes, ma'am.
9 THE COURT: Okay, the FBI. Thank you.
10 MR. THOMAS: I'm sorry.
11 A. The FBI he came and he said that he was going to get the
12 judge to be lenient on my sentence if I told him all this big
13 drug information or whatever I knew. And I gave him what I
14 could about these guys that was in my hotel room.
15 Q. Okay. Why ---
16 A. And ---
17 Q. --- was the FBI involved?
18 A. Because it was a bank robbery. And the Secret Service
19 was there.
20 Q. Did you actually have federal charges?
21 A. No.
22 Q. Okay. So it stayed in the state prosecution?
23 A. Right.
24 Q. Okay. Now also there was a Neil versus Biggers' motion.
25 That was regarding the identification. Do you remember that

1 pretrial motion?

2 A. Yes, sir.

3 Q. Okay. And your attorney was trying to suppress

4 identification?

5 A. Right.

6 Q. Okay.

7 A. Ms. Tamara Van ---

8 Q. Okay.

9 A. --- Pala.

10 Q. And did that have any impact upon your decision?

11 A. I'm not sure that it did, no, sir.

12 Q. Okay. Okay. Now you said when you and I talked you said

13 that you wanted a trial and defense counsel said she was not

14 going to represent you.

15 A. Yes.

16 Q. Is that -- is that what you understood; I mean that was -

17 --

18 A. Yes.

19 Q. --- a concern?

20 A. Yes. And, like I said, I wrote several agencies about

21 her. And, you know, I was trying to get another lawyer. I

22 came to court to get another attorney and I was denied.

23 Q. And you had been using -- you indicated to me that you

24 were intoxicated on that day in question?

25 A. Yes.

1 Q. And that you had been -- that you were under the
2 influence of crack cocaine?

3 A. Yes.

4 Q. Did you talk to counsel, your defense attorney about
5 voluntary intoxication ---

6 A. Yes.

7 Q. --- being a defense?

8 A. Yes, sir.

9 Q. Did you understand that that is not a defense?

10 A. No, I didn't.

11 Q. Okay.

12 A. Because that was our whole dilemma. That is what she
13 even said in court. I didn't understand it.

14 Q. You didn't understand it?

15 A. No.

16 Q. Okay. And another thing that I noticed and you and I
17 also talked about, you were -- you were taking medication for
18 mental health?

19 A. Yes.

20 Q. And are you taking medication for mental health now?

21 A. Yes.

22 Q. And where are you housed in the South Carolina Department
23 of Corrections?

24 A. The Lieber Correctional Facility.

25 Q. And in what unit?

1 A. Right now I am in the Wando Unit. I was in the Edisto
2 Unit which is where they house all of the mental health
3 patients.

4 Q. Okay. And you have been in Corrections for how long?

5 A. Since February the 2nd, 2017.

6 Q. And of that period of time has the majority of your time
7 or -- tell me how much time you have spent in mental health --
8 in the mental health unit?

9 A. The majority of my time.

10 Q. The majority of your time. Okay. And you actually told
11 the court the medications that you were taking?

12 A. Yes.

13 Q. Okay. And he asked you -- the judge asked you whether or
14 not this influenced your decision?

15 A. Yes.

16 Q. And I believe that you told him no?

17 A. I told the judge that -- yeah, because he -- it was sort
18 of like -- they were kind of pushing me to say no.

19 Q. Okay. That ---

20 A. Because that is not -- that is not how -- a lot of the
21 things that they were -- if you were at the court that day you
22 would have noticed that -- you know, Judge Dennis he
23 understood that I had a problem with my attorney. He
24 understood when I told him that I was on the mental health
25 medication and that I was under the influence of that and that

1 I may not be, you know, totally coherent to certain things.

2 You know, he understood that to be the case.

3 But he said, well, just for -- basically, well, we are
4 just going to go ahead and just say, yeah, that you do
5 understand. And so I said, yeah.

6 Q. Okay.

7 MR. THOMAS: Your Honor, just for the court's information
8 that is Page 84 of the transcript in basically Lines 14
9 through 23.

10 THE COURT: Okay. Thank you.

11 MR. THOMAS: Yes, ma'am.

12 Q. Okay. So this brings us, Mr. Huger, to the question that
13 I had at the beginning of our case. You and I talked about,
14 you know, some legal terms in regards to your plea and, you
15 know, plea versus trial and how that decision -- how your
16 decision was made to take the plea.

17 And a plea has to be freely and voluntarily given. Do
18 you believe that your plea in this case was freely and
19 voluntarily given?

20 A. No, sir.

21 Q. And why not?

22 A. I don't believe it was freely and voluntarily given,
23 because, number one, I did not agree with my representation.
24 Number two, I don't believe that I had sound enough judgment
25 enough to make that decision because I didn't understand my

1 case enough -- I didn't -- I was under the influence of mental
2 health medication.

3 And I didn't have anybody to sit down and go over that
4 stuff with me properly to understand what I was facing and the
5 correct decisions I needed to make.

6 Q. Okay. And you actually had an evaluation prior ---

7 A. Yes, sir.

8 Q. --- to trial, and that was at MUSC?

9 A. Yes, sir.

10 Q. And they found you fit to stand trial?

11 A. Yes, sir.

12 Q. Okay. But you still felt like you didn't understand what
13 was going on?

14 A. Right.

15 Q. Okay. Now the second part of that is knowingly and
16 intelligently given. Do you believe that your plea was
17 knowingly and intelligently given? You are going to have to
18 speak up for us. I'm sorry.

19 A. No, sir.

20 Q. Okay. And why do you feel that that was not done?

21 A. Do you mean that on my part?

22 Q. Yeah, on your part. Did you -- do you feel like you had
23 all the information that you needed ---

24 A. No, sir.

25 Q. --- to make an intelligent decision?

1 A. No, sir.

2 Q. How much did you understand of what was going on?

3 A. I understood that I was allegedly being charged with
4 entering into a bank with the intent to steal.

5 Q. Yes, sir.

6 A. I understood that ---

7 Q. Okay, yes, sir.

8 A. I understand that, you know, I was facing time for it. I
9 understood that the judge -- well, the DA had enhanced my
10 charge to armed robbery. I didn't understand why.

11 But I understood that I asked for my attorney to get my
12 plea down to a strong-armed robbery or something that is
13 suitable for the crime. And she didn't do that.

14 I see that she -- I know that she didn't even come to the
15 jail to talk to me about my case very much at all. I don't
16 like I was -- I don't think that she did the minimum job that
17 is required by the State for an officer of the court.

18 Q. How old will you -- how old will you be when you get out
19 of prison?

20 A. Sixty-one.

21 Q. Okay. All right. Mr. Huger, I always ask this question.
22 And by asking this I am not implying that I have forgotten
23 something. This is your day in court. And you have waited a
24 long time to be here. Is there anything else that I may have
25 failed to ask you or that I have forgotten to ask you that you

1 feel is important that you would like to bring to the court's
2 attention today?

3 A. Yes. In addition to the State versus Muldrow case
4 there's -- there are other cases that I can vaguely remember
5 from the top of my head. One is the State versus Gillespie,
6 Travis Gillespie. He robbed that very same bank the -- before
7 I robbed it. And he is on -- he is at home right now on
8 probation.

9 There is another guy that robbed ten banks. I can't
10 remember his last name. I wish I could right now. I have got
11 it in my paperwork. He robbed ten banks with notes.

12 Now I am not saying that it has got to do anything with
13 race. But I am saying it is very ironic, all of these fellows
14 are white fellows. This guy got -- his first plea was zero to
15 ten. He is at home right now on probation. I have the
16 paperwork right there in my -- in that yellow manila folder.

17 I am not saying that I didn't deserve to do the time that
18 I have done. I have done that. And everything happens for a
19 reason. I just understand that there is no way that I should
20 have been -- that my charges should have been enhanced to an
21 armed robbery. There was no weapon. There should have been a
22 plea agreement from the beginning from the initial charge.
23 And that would have been in accordance with the law in the
24 State of South Carolina.

25 Q. All right.

1 MR. THOMAS: Your Honor, I have no further questions.

2 THE COURT: All right.

3 Mr. Limbaugh.

4 MR. LIMBAUGH: May it please the court, Your Honor.

5 THE COURT: Yes.

6 **CROSS-EXAMINATION BY MR. LIMBAUGH OF SHELDON HUGER:**

7 Q. Just to clarify something very quickly, Mr. Huger. Did
8 you just say that Mr. Gillespie robbed the same bank I robbed?

9 A. Well, he robbed the same bank I allegedly robbed. Excuse
10 me.

11 Q. Okay. I just wanted to -- wanted to ask. And earlier
12 Mr. Thomas asked you about your conversation with Judge Dennis
13 about you wanting to get a new attorney; is that correct?

14 A. Yes.

15 Q. And did you say that Judge Dennis -- or is it your
16 understanding that Judge Dennis basically told you no?

17 A. His exact words were this is not Congress, you don't get
18 to choose who you want as your attorney; no, I am not getting
19 rid of her; either you accept the plea or you don't accept the
20 plea; not what do you want to do.

21 Q. Okay. I will direct the Court's attention to Page 4,
22 Line 8, you can hire your own attorney, from Judge Dennis.

23 THE COURT: The court will review the record thoroughly
24 before making any decision on this case. Thank you.

25 MR. LIMBAUGH: Thank you, Your Honor.

1 THE COURT: Yes, but thank you for that.

2 Q. And were you being truthful with Judge Dennis during your
3 plea proceeding?

4 A. I don't -- I mean -- I was telling that man the best that
5 I could tell him based under -- under the circumstances, sir.
6 I don't think that I just set out to lie to him about
7 anything. I told him I was under the influence of mental-
8 health medication. And I told him what happened. And I told
9 him how I felt about it and how I felt about my attorney.

10 Now when they asked me all of those questions at the end
11 and they said do you like your attorney and all of this stuff
12 like that and he looked at me; and I was like, yeah, you know
13 -- no, I didn't tell him the 100 percent truth at the end.

14 Q. But you did tell him at least on multiple occasions that
15 you felt they were good lawyers and smart people; do you
16 remember saying that?

17 A. I do remember saying -- they are smart people. And I
18 will tell you that even today, they are smart. Obviously they
19 have got lawyer licenses and stuff. You know, yeah, they're
20 brilliant people. They are smart enough to railroad you if
21 they want to.

22 Q. Do you remember Judge Dennis asking you if you were
23 telling the truth and he was going to rely on that during your
24 plea?

25 A. No. But you can probably read it to me because I -- to

1 help me remember please.

2 Q. That is fine. I am just asking for your recollection.

3 A. Yes, sir.

4 Q. The judge has the record. I won't review the whole
5 record with you, but do you remember -- was Judge Dennis very
6 responsive in your questions to him and your concerns
7 throughout this process?

8 A. I think Judge Dennis was -- yes, sir, I think he was.

9 Q. Okay. Just to backtrack a little bit with you. How many
10 times did you say that you met with Ms. Proctor?

11 A. I believe -- I am not 100 percent sure now. I am just
12 thinking it was like two times she come to the jail to see me.

13 Q. And did you say that you did review discovery, what the
14 State had against you, for the most part in this case?

15 A. I believe we did, yes, sir, ---

16 Q. Okay.

17 A. --- briefly.

18 Q. And you did have that confession that you gave; is that
19 correct?

20 A. Did I have it?

21 Q. Do you remember giving that to the police?

22 A. Yes.

23 Q. Okay.

24 A. I remember giving a statement, but as far -- you know, --
25 yeah, go ahead.

1 Q. And I believe you -- you stated earlier that you
2 understood the charges they were bringing against you -- you
3 might not have agreed with what you were being charged with
4 but you understood at your plea what you were being charged?

5 A. Yes.

6 Q. Okay.

7 A. But can we go back to that statement right quick?
8 Because I believe I even stipulated in my PCR statement that I
9 was coerced in that statement.

10 MR. LIMBAUGH: A moment's indulgence, Your Honor.

11 A. If you look in my paperwork.

12 Q. Oh, as far as -- in which statement, Mr. Huger?

13 A. In -- I guess the statement that you are asking me about
14 that I said -- that you said a confession.

15 Q. Oh, okay. And why do you feel you were coerced into
16 giving that statement?

17 A. Because you have two guys and they have got guns sitting
18 in front of me, and they are sitting me there and they are
19 trying to tell me that, you know, if you just do what we tell
20 you to do then we are going to do this for you, you know.

21 Q. And there was a hearing on suppressing that statement; is
22 that correct?

23 A. Yes.

24 Q. And do you remember Judge Dennis ruling on that and
25 allowing that ---

1 A. I don't remember his ruling.

2 Q. Okay.

3 MR. LIMBAUGH: That's all I have, Your Honor.

4 THE COURT: Okay. Any redirect?

5 MR. THOMAS: Your Honor -- just one question, Your Honor.

6 THE COURT: Mr. Thomas, yes, go ahead.

7 MR. THOMAS: Yes, ma'am.

8 **REDIRECT EXAMINATION BY MR. THOMAS OF SHELDON HUGER:**

9 A. Mr. Huger, you were asked by counsel about whether you
10 were truthful with Judge Dennis, and I would like to ask you a
11 little bit more about your response.

12 You were truthful to him with the information that you
13 had at the time?

14 A. Yes.

15 Q. Okay. And do you believe that you had all of the
16 information that you needed to be able to answer those
17 questions?

18 A. No, sir.

19 Q. Okay.

20 MR. THOMAS: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. THOMAS: Yes, ma'am.

23 THE COURT: Anything else, Mr. Limbaugh?

24 MR. LIMBAUGH: Nothing from the State, Your Honor.

25 THE COURT: Okay. Mr. Huger, I appreciate your

1 testimony. You can step down and take a seat back at counsel
2 table, please, sir.

3 (WHEREUPON, witness complied.)

4 MR. THOMAS: Your Honor, if I could beg the court's
5 indulgence just for a second.

6 THE COURT: Of course.

7 MR. THOMAS: Okay.

8 (WHEREUPON, Mr. Thomas confers with Applicant Huger.)

9 MR. THOMAS: Your Honor, if it please the court, that is
10 the Applicant's case.

11 THE COURT: Okay. No further witnesses then at this
12 time ---

13 MR. THOMAS: No, ma'am.

14 THE COURT: --- from the -- okay. Thank you very much.

15 All right.

16 Mr. Limbaugh, any witnesses you would like to call at
17 this time?

18 MR. LIMBAUGH: The State would like to call Ms. Proctor.

19 THE COURT: Okay.

20 (WHEREUPON, the witness was duly sworn.)

21 THE CLERK: For the record please state your full name
22 spelling your last.

23 THE WITNESS: Lorelle Proctor. P-R-O-C-T-O-R.

24 **DIRECT EXAMINATION BY MR. LIMBAUGH OF LORELLE PROCTOR:**

25 Q. Good morning, Ms. Proctor.

1 A. Good morning.

2 Q. I understand you are now retired. Congratulations.

3 A. Three weeks, yes.

4 Q. Before your retirement how long had you been practicing
5 law?

6 A. I think 34 years.

7 Q. And was all of that at the Public Defender's Office?

8 A. Yes.

9 Q. Okay. I am just going to start kind of just diving into
10 these allegations if that is all right with you. There was
11 some discussion about his mental health. At any point
12 throughout your representation of Mr. Huger did you have any
13 competency concerns?

14 A. I know that we did have him evaluated. We did a
15 competency hearing on him and they found that he was
16 competent. So I don't remember if it was at the beginning or
17 why we had it. I just -- I can't remember. But we did have a
18 competency hearing done.

19 Q. And he was found competent to stand trial?

20 A. Yes.

21 Q. And do you believe he understood all of your
22 conversations with him?

23 A. Yes.

24 Q. Okay. Would you characterize him as being fairly
25 involved in his pretrial preparation?

1 A. I think he was involved. We went over everything with
2 him. Our goal was to not have him get life in prison. And
3 because of his prior record there was that chance. So that's
4 what we were working towards.

5 Q. Now was he involved in that decision-making process, in
6 trying to avoid life?

7 A. Well, I -- I mean we explained everything to him. I mean
8 he knew. So I assume so.

9 Q. You mentioned some concern over the State vs. Muldrow
10 with the having to point and present the weapon, that sort of
11 thing. Can you just try to provide the court some
12 clarification on your understanding.

13 A. We did have that case. And I think he -- the
14 solicitor -- I want to say he was directly indicted for armed
15 robbery. I can't remember. But I know on our pretrial
16 motions it was on the sheet. So once they did that I think
17 that we had that case. We talked about it.

18 And I do agree, I think -- I went over it with Mr. Corvey
19 a million times. I said I don't think this is, you know, an
20 armed robbery; I don't believe that he -- I don't think he had
21 a gun and I think the video doesn't show a gun. So that was a
22 big issue that we spoke about a lot.

23 Q. Okay. How strong was the State's evidence against Mr.
24 Huger in this case?

25 A. Well, unfortunately it was on -- it's -- because it was

1 in a bank it is recorded. So we have the recording. There
2 was a police officer standing next to him. He was in plain
3 clothes. He was there to return the money from the day before
4 when the bank had just been robbed. So he was on the scene.

5 Mr. Huger gave a quite lengthy conversation which we had
6 on tape and video of. It was like three or four hours I think
7 with the Feds. And we were trying to make sure -- we were
8 hoping the Feds wouldn't take the case.

9 Q. And did you have a hearing, a Biggers hearing to try to
10 suppress that or Jackson V. Denno?

11 A. Yes. We ended up -- we were going to trial and so we had
12 asked Judge Dennis if we could maybe do the pretrial motions
13 maybe a week ahead of time, which he seems to like. Which is
14 good because you get all of that done and you know how to then
15 prepare.

16 So we did have all of our pretrial motions I think a week
17 before the trial.

18 Q. Okay.

19 A. And so those were the ones I think we had submitted.

20 Q. And not to ask the obvious, but since you were doing
21 pretrial motions I am assuming you were ready to go to trial
22 if necessary.

23 A. Oh, yes, we had our trial notebooks. We were ready. We
24 were -- we had worked on this case, Ms. Van Pala and I, I mean
25 late in the night. Ted Corvey was tired of us calling him.

1 So we worked, yes, very very hard on it. And we were
2 just afraid -- we had talked to him so many times about a
3 plea, can you give us something else. I know he wanted strong
4 armed -- I -- like I say, I don't think he had a gun, but it
5 was the fact of his prior record. And there was assault and
6 battery with intent to kill on that and -- that involved a
7 family member. So Ted just -- Mr. Corvey just would not
8 budge.

9 Q. And can you give us a little insight into the LWOP issue
10 that was mentioned earlier?

11 A. Well, I think when they -- he was -- when he -- I think
12 the LWOP came when they served the armed robbery -- the --
13 entering the bank with the intent to steal was not a strike,
14 but the armed robbery was. So that is what we sort of wanted
15 to go away. And so we had our pretrial motions, and we lost
16 all of them.

17 We talked to Mr. Corvey about will you plead, how about
18 just entering a bank to steal with a 25-year sentence then so
19 he won't get life.

20 And it was a long morning. We spoke -- it was like an
21 hour or two after the hearings that we kept speaking with Mr.
22 Huger and even with -- Mr. Pennington the head public defender
23 came in. And I think he talked to him. We even called his
24 mother -- I mean his -- I think it was his mother we were able
25 to call while he -- we were in the room talking with him.

- 1 Q. And you knew that he would ultimately end up pleading to
2 the entering a bank with the intent to steal, correct?
- 3 A. Yes.
- 4 Q. And not the armed robbery?
- 5 A. Right.
- 6 Q. Okay. And in -- to the best of your knowledge was it Mr.
7 Huger's ultimate decision to plead guilty that day after those
8 long conversations?
- 9 A. Yes, and I think because of that Judge Dennis --
10 sometimes pleas are fairly fast. Some are lengthy. And I
11 think if you notice the plea Judge Dennis was very careful.
12 And it was a very long plea, and he wanted to make sure that
13 he was doing this on his own. And we talked a lot about it.
14 And so I think it was he knew exactly what he was doing.
- 15 Q. And do you recall -- you know, it is hard to get the
16 tenor from the transcript. But Judge Dennis making the effort
17 to pause and answer any questions that Mr. Huger had this
18 morning -- or that morning just ---
- 19 A. Definitely, yes.
- 20 Q. Okay. And he did thoroughly answer any and all concerns
21 that he had; is that correct?
- 22 A. Yes.
- 23 Q. And the ongoing negotiations of which Mr. Huger
24 eventually accepted, that was with his --
- 25 MR. LIMBAUGH: Let me rephrase, Your Honor.

1 Q. Mr. Huger was involved and wanted to go along with those
2 negotiations that you are having with the Solicitor's Office;
3 is that correct?

4 A. Yes.

5 Q. Okay. That is all I have for this witness, Your Honor.

6 THE COURT: Okay.

7 MR. THOMAS: May it please the court.

8 THE COURT: Yes, sir.

9 **CROSS-EXAMINATION BY MR. THOMAS OF LORELLE PROCTOR:**

10 Q. Ms. Proctor, good morning.

11 A. Good morning.

12 Q. I wish I was retired. I ---

13 A. I didn't think I would be back in the courtroom so
14 quickly.

15 Q. The only benefit - I've been doing this over 30 something
16 years - is that you don't have to get CLE's anymore. Of
17 course I couldn't understand that and then you go well they
18 think I can't learn anything else anymore, you know.

19 But anyway, thank you for being here this morning.

20 Just in looking at this case I notice the -- you said
21 that you sent him for a mental health evaluation?

22 A. Yes.

23 Q. And so you -- so obvious -- and it came back that he was
24 fit to stand trial, but obviously you had some concerns to
25 send him?

1 A. Yes.

2 Q. Yes, sir.

3 A. He had had an evaluation done before I think on his first
4 case is my understanding when Mr. Beatty Butler represented
5 him. So because there was already an eval done on him we -- I
6 think in talking to him -- because there were some issues. I
7 think I -- whether they were from doing drugs or what. But we
8 figured to be safe we wanted to do an evaluation to make sure
9 he understood everything and if there were any mental health
10 problems.

11 Q. And obviously from the testimony in the record he was
12 taking mental health meds at the time of the plea?

13 A. Yes

14 Q. Yeah. Okay. In thinking this thing through -- and I
15 know that you outline -- or I think the solicitor outlines
16 which is basically pages -- or Page 17 of the transcript to
17 talk about what his prior record is. And I think it is
18 common-law robbery in North Carolina, B&E in North Carolina,
19 felony larceny in North Carolina, an ABWIK which is of course
20 a violent and a strike. And South Carolina an aggravated
21 battery. A false imprisonment in Georgia. I don't basically
22 know what those are.

23 But anyway, it was your impression or I guess your
24 determination that the strike that was going to make him LWOP
25 was going to be that armed robbery?

1 A. Yes.

2 Q. Okay. So we kind of went into this situation as far as
3 determining exposure with the armed robbery and the LWOP on
4 the table which could kick him into something greater than
5 what happened in the bank?

6 A. Yes.

7 Q. Okay. And he pled to entering bank with intent to
8 steal -- which and I could be wrong. I'm sorry, I was
9 thinking it was 30 years ---

10 A. It is zero to thirty.

11 Q. Yes, ma'am. And he got the benefit of a plea five years
12 off, he got twenty-five?

13 A. Yes, and the armed robbery was I think dismissed.

14 Q. Yes, ma'am. So in evaluating risk to enter into the plea
15 I guess maybe -- or from what I read in the transcript I guess
16 there was greater possibility of conviction on the robbery,
17 the bank robbery, than there was on the LWOP and the armed
18 robbery because you actually had defenses to that?

19 A. Correct, I think that would have been a jury question.
20 Because they would have seen the video. And they never found
21 a gun. And I don't think -- it is my understanding if I'm --
22 if I remember right I don't believe the police officer,
23 Officer Rydell, ever mentioned he saw a gun either.

24 Q. I don't -- I don't think he did either.

25 A. I don't think he did. So I think the solicitor wanted

1 that case because it did enhance it to life. But, like I say,
2 it would have been a jury question and I would have hoped that
3 would have come back that he did not have a gun. Because I
4 just don't think there was any evidence of it.

5 Q. Yes, ma'am. And then I guess -- the transcript maybe
6 provides us the answer about the LWOP notice. If the judge
7 would have had to continue the case for them to have had the
8 time to properly notice the defendant ---

9 A. Correct.

10 Q. --- of the ---

11 A. And that is why I think it was sort of that day we --
12 after our pretrial motions we asked Judge Dennis please don't
13 leave, don't leave yet because we knew that if we didn't sort
14 of work it out then then the life notice would have come. And
15 so we were trying to get it done. Because I think we were
16 going to go to trial the next Tuesday.

17 Q. Okay.

18 A. So we were trying to get it done. We can't -- I think --
19 now that I think of it -- I can't remember what the note said,
20 but I don't know whether it said I have a gun. But there was
21 something that made the State think. That is why I think they
22 were going to go with the armed robbery. But there was never
23 any evidence or anybody that said he ever had one. Or the
24 bank teller didn't say he had one.

25 Q. Right. So in assigning risk to these elements of in

1 making a determination for a plea or trial the bank robbery
2 conviction would have had a high risk, potentially, and maybe
3 there was lesser risk to the LWOP and the armed?

4 A. Correct.

5 Q. Okay. All right.

6 MR. THOMAS: Thank you, Your Honor.

7 THE COURT: Okay. Any redirect?

8 MR. LIMBAUGH: Just two, Your Honor.

9 **REDIRECT EXAMINATION BY MR. LIMBAUGH OF LORELLE PROCTOR:**

10 Q. Mental health concerns are not the same as being mentally
11 incompetent; is that correct?

12 A. Correct.

13 Q. And whose ultimate decision was it to plead guilty?

14 A. It was Mr. Huger's.

15 MR. LIMBAUGH: Thank you. That is all I have, Your
16 Honor.

17 THE COURT: All right. Any objection to this witness
18 being excused?

19 MR. THOMAS: Can I -- in addressing that can I raise one
20 more question?

21 THE COURT: Sure. I'm sorry.

22 MR. THOMAS: Okay.

23 THE COURT: Go ahead.

24 **RECROSS-EXAMINATION BY MR. THOMAS OF LORELLE PROCTOR:**

25 Q. Did you discuss with your client or do you know in what

1 his understanding of the LWOP was, whether or not he was
2 going -- he was potentially LWOP-able, for lack of a better
3 word?

4 A. Yes, I am sure we did. And also I think when Mr.
5 Pennington came in, again, we were in lockup; we went over
6 that. And when someone is looking at life without parole that
7 means life without parole. And I think with his sentence now
8 when he does get out he will still be younger than I am today.
9 So our job when someone is served with life is to do
10 everything we can to keep that from happening.

11 Q. Okay. And do you know whether or not he was -- he knew
12 if he was enhancable to LWOP with or without the armed robbery
13 or did y'all talk to him about that?

14 A. I'm sorry?

15 Q. In other words did he have the understanding that his
16 exposure to LWOP was based on the armed robbery, or did he
17 have an understanding that his prior crime could have caused
18 him to be LWOP'd?

19 A. I can't answer. But I know we explained it to him.

20 Q. Okay. All right.

21 MR. THOMAS: Thank you, Your Honor.

22 THE COURT: All right. Now is there any objection to her
23 being excused.

24 MR. LIMBAUGH: None from the State, Your Honor.

25 MR. THOMAS: No objection, Your Honor.

1 THE COURT: Thank you so much. Thank you, Ms. Proctor.
2 Does the State have any other witnesses it wishes to call
3 at this time?
4 MR. LIMBAUGH: The State rests, Your Honor.
5 THE COURT: All right.
6 Mr. Thomas, anything you would like to tell the court in
7 summation?
8 MR. THOMAS: Your Honor, I don't normally do a summary
9 because we don't have a jury. I think ---
10 THE COURT: No, but just in general. I mean I will
11 review the record ---
12 MR. THOMAS: Yeah.
13 THE COURT: --- obviously. But anything -- any major
14 points you want me to focus on I am happy to hear from you.
15 MR. THOMAS: I think I can do it very quickly. What we
16 have got is we have got a plea. So, you know, for post-
17 conviction purposes we have to show that it was involuntarily
18 given.
19 I think we have presented our case today. I think there
20 are a couple of factors. One, the mental health meds played a
21 role in this whether or not he understood what he was doing or
22 not. And, two, I think it kind of really may be more
23 important it comes down to these issues of knowing the risk to
24 make a decision on whether or not you are going to plea or
25 trial.

Sheldon Huger

1 I think he is telling me honestly that he didn't
2 understand. And I think that from the testimony today what we
3 have is fear in this case was really the LWOP. And he
4 testified that he was fearful of the LWOP. He was afraid he
5 was going to get life without parole.

6 Well, if the whole enhancement was the armed robbery I
7 think he -- there was a substantial -- or some defense to
8 that. Plus we don't know if the court was going to continue
9 the case for them to properly notice him with LWOP. Judge
10 Dennis never tells us that in the transcript.

11 So I think that he really didn't knowingly and
12 intelligently enter into this plea. Because the testimony is
13 that he was fearful of the LWOP. And I think there was quite
14 some possibility that he wasn't going to be LWOP'd; but I
15 don't think he had the basis to balance those two issues, Your
16 Honor.

17 THE COURT: Okay.

18 MR. THOMAS: Yes, ma'am.

19 THE COURT: Thank you very much. I appreciate that.

20 MR. THOMAS: Yes, ma'am.

21 THE COURT: Yes, sir, anything else you need to tell me?

22 MR. LIMBAUGH: Just in a brief response to that argument,
23 Your Honor. I think it is perfectly logical to be fearful of
24 life without possibility of parole.

25 And, as Mr. Thomas just stated, yes, there might have

1 been some defense to the armed robbery at a trial; but he was
2 still convicted -- he was still charged with it, and the
3 jury -- it was a jury question ultimately. He still could
4 have been found guilty at a jury trial and then served LWOP
5 notice -- or been served LWOP notice and then found with life
6 without parole.

7 Ms. Proctor explained to him the risk, the LWOP. And,
8 you know, the plea kind of -- the record stands for itself in
9 terms of what he said to Judge Dennis being truthful and
10 honest.

11 THE COURT: Okay.

12 MR. LIMBAUGH: And the State will rely on that record,
13 Your Honor.

14 THE COURT: Okay.

15 MR. THOMAS: Thank you.

16 THE COURT: Well, I will certainly review the record
17 thoroughly. It has been handed up to me today. And just so
18 that I make sure I have every part of it that I need to
19 have -- I have the initial application that was filed, once
20 again, August 25th, 2017. I believe there are several
21 handwritten pages attached to that. I have the return filed
22 on behalf of the State. And I have the sentencing sheets as
23 well as well as a transcript from February 1st, 2017. I
24 don't -- was there ever an amended application filed or
25 anything like that?

1 MR. THOMAS: No, Your Honor.

2 THE COURT: Okay. Yeah, then I should have everything I
3 need then.

4 MR. THOMAS: Okay.

5 THE COURT: So I will review the record. And I will
6 communicate with the attorneys within the next 30 days and
7 request a proposed order from one of you at that time. Okay.

8 MR. THOMAS: Thank you, Your Honor.

9 THE COURT: Thank you very much.

10 MR. LIMBAUGH: Thank you.

11 THE COURT: I appreciate your time here today.

12 Good luck, Mr. Huger.

13 APPLICANT HUGER: Thank you.

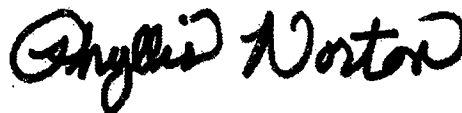
14 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on March 21, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

A handwritten signature in black ink that reads "Phyllis Norton". The signature is written in a cursive, flowing style.

PHYLLIS NORTON, CVR

Date: September 13, 2019

Certified Transcript Provided For:
Certification Reference #2019-0913 Original

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF CHARLESTON 2019 APR 30) PM 2:15 FOR THE NINTH JUDICIAL CIRCUIT

SHELDON HUGER,
 S.C.D.C. No. 303793

Applicant,

v.

STATE OF SOUTH CAROLINA,
 Respondent.

JULIE J. ARMSTRONG
 CLERK OF COURT

Case No. 2017-CP-10-4361

ORDER OF DISMISSAL

Sheldon Huger ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of Charleston County Clerk of Court.

Lorelle Proctor, Esquire, of the Charleston County Public Defender's Office, represented Applicant. Assistant Solicitor Ted Corvey prosecuted the cases. On February 1, 2017, Applicant appeared in the Charleston County Court of General Sessions before the Honorable R. Markley Denis, Jr., circuit court judge, proceeded to trial. Following pre-trial hearings, Applicant elected to forego his right to trial and entered a guilty plea as indicted. Pursuant to negotiations with the State, Judge Dennis sentenced Applicant to twenty-five years imprisonment. Applicant did not appeal his guilty plea or sentence.

In his *pro se* application for post-conviction relief, Applicant alleges he is being held in custody unlawfully due to the following allegations:

1. "I did not attend a preliminary hearing;"
2. "Ineffective assistance of counsel;"
3. "Mental health disabilities;"
4. "My case prejudiced from State vs. Muldrow and State v. Gillespie, Travis;
5. "My plea arrangement was enhanced to armed robbery and should have been lessened to strong armed robbery-I did not have a weapon."

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In his attached pages, Applicant gives facts to support these allegations by alleging what counsel did or did not do adequately in regard to each of these allegations. Therefore, respondent interprets all of these allegations as ineffective assistance of counsel.

Facts of Case

On December 16, 2015, Applicant entered the First Citizens Bank located at 5090 Dorchester Road in Charleston County and approached the teller counter. He passed a note to the teller indicating he was armed with a gun and demanding money. The teller acknowledged the note and began removing monies from her drawer until Applicant instructed her to stop. The teller then placed the monies on the counter and Applicant took the sum of currency. While this was occurring, Detective Riedel of the North Charleston Police Department was at the bank conducting other business and observed Applicant's actions. Detective Riedel approached Applicant, announced himself as an officer, and asked Applicant to stop. Applicant refused to comply and took off on foot. A foot chase ensued, after which Applicant was apprehended nearby. Detective Riedel positively identified Applicant, who had the currency on his person at the time of arrest. During its August 2016 term of court, the Charleston County Grand Jury indicted Applicant for entering a bank with intent to steal (2016-GS-10-4915).

Findings of Facts and Conclusions of Law

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, William Brunson. Each allegation is addressed fully below.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a "reasonably competent attorney." 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286, 442, 334

S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins, 539 U.S. at 526-527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687; Harrington, 562 U.S. 86.

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel’s representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Strickland, 466 U.S. at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is “reasonably likely” the result would have been different. Id. at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between Strickland’s prejudice standard and a more-probable-than-not standard is slight and matters “only in the rarest case.” Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Applicant's allegation is addressed fully below:

Applicant was not present at preliminary hearing

At the evidentiary hearing, Applicant testified that he was not present at any preliminary hearing before he pled guilty. This Court finds that this allegation must be denied and dismissed with prejudice. First, regarding the Entering a Bank with Intent to Steal (2016-GS-10-04915), Applicant was properly indicted by the Charleston County Grand Jury during the August 9, 2016 term. This Court finds that Counsel was not deficient for failing to request a preliminary hearing on Applicant's behalf. Furthermore, this Court finds that Applicant was not prejudiced by Counsel's alleged deficiency, as indictment by a grand jury constitutes a finding of probable cause and thus avoids the need for a preliminary hearing. See State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (1982) (finding that indictment constitutes finding of probable cause and thus avoids need for preliminary hearing). Therefore, there is no reasonable likelihood that Applicant's charge would have been dismissed had Counsel moved for a preliminary hearing. Additionally, Applicant's acceptance of the State's favorable plea negotiation and his silence at the guilty plea proceeding regarding his desire for a preliminary hearing constitutes a waiver. Bonnette v. State, 277 S.C. 17, 282 S.E.2d 597 (1981).

Allegation that counsel was deficient for failing to address Applicant's mental health disabilities

At the evidentiary hearing, Applicant testified that he takes prescription medication for mental health issues. Applicant testified that he did not understand the proceedings during his pretrial hearings. Applicant also testified that he understood the charges against him, the

negotiations, and his discussions with counsel. Counsel testified that she had Applicant evaluated for competency and that he was found to be competent to stand trial. Counsel also testified that she believes that Applicant understood all of her conversations with him. Applicant's mental health concerns were also addressed by the plea court on the record and the Court found that Applicant understood the proceedings and was making a knowing, intelligent, and voluntary decision to plead guilty. This Court finds that counsel acted reasonably within professional norms by having Applicant evaluated for competency. This Court finds this allegation is without merit and dismisses it with prejudice.

Allegations relating to Armed Robbery

This Court finds that the record and testimony of counsel directly refute any allegations relating to Applicant being charged with armed robbery. The record indicates that Applicant was not in fact indicted for armed robbery, but was indicted as to entering a bank with intent to steal. Further, any allegations relating to potentially being charged with armed robbery are not relevant, because Applicant ultimately plead guilty to the charge of entering a bank with intent to steal. Applicant contends his plea was enhanced to an armed robbery, the record directly refutes this assertion. Applicant also contends that certain case law may have helped him were he to have been tried as to armed robbery, however, that allegation was made moot by his decision to plead guilty. This Court finds that there is no factual basis for Applicant's allegations regarding concerns related to any potential armed robbery charge and therefore dismisses these allegations with prejudice.

III. CONCLUSION

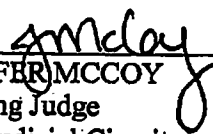
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 30th day of April, 2019.


JENNIFER MCCOY
Presiding Judge
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA) IN THE COUNT OF COMMON PLEAS
COUNTY OF CHARLESTON) DOCKET NO.: 2017-CP-10-4361

Sheldon Huger #303793,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF MOTION AND MOTION
TO ALTER OR AMEND

FILED
2019 MAY 21 AM 10:36
JULIE J. ARMSTRONG
CLERK OF COURT

PLEASE TAKE NOTICE that the Applicant, through his undersigned attorney will move before the Honorable Jennifer McCoy, to alter or amend the judgment entered in this action on April 30 2019. A copy of the Order of Dismissal was received by the undersigned attorneys on May 6, 2019.

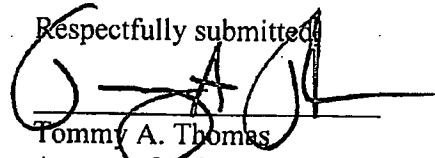
COMES NOW the Applicant, by and through his undersigned attorney, and submits the following:

1. That the Attorney for the Applicant mailed a copy of this Court's Order to Applicant at Lieber Correctional Institution on May 16, 2018.
2. That the Attorney has been unable to review this Order with his client due to the ongoing State wide lock-down situation at the Department of Corrections.
3. Counsel would like to preserve Applicant's right to alter or amend the Order of Dismissal. There appear to be issues that need to be address that are not in the order.
4. These issues include but are not limited to:
 - a. Testimony of the Applicant.
 - b. Issues of ineffective assistance of counsel presented at Trial.

- i. improper advice regarding Life without parole exposure.
- ii. improper advice regarding trial and acceptance of a plea.
- iii. due to ineffective assistance of counsel, guilty plea was not freely voluntarily, intelligently or knowingly entered into.

For the above reasons, the Applicant would like to preserve his right to Alter or Amend the Court's Order and would respectfully request that this Court allow counsel to amend this Motion to alter or Amend to include any additional issues as needed.

Respectfully submitted,


Tommy A. Thomas
Attorney for the Applicant
7588 Woodrow Street
Irmo, SC 29063
(803) 732-5507

May 16, 2019
Irmo, South Carolina

CC
AG
AT

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Sheldon Lamar Huger, #303793,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2017-CP-10-4361

ORDER

DENYING APPLICANT'S MOTION
TO ALTER OR AMEND THE COURT'S
FINAL ORDER OF APRIL 30, 2019FILED
JUL 26 PM 12:50
CLERK OF COURT

THIS MATTER came before the court by way of a post-conviction relief (PCR) application filed on August 25, 2017. An evidentiary hearing into the matter was convened on March 18, 2019, at the Charleston County Courthouse. Applicant was present at the hearing and was represented by Tommy Thomas, Esquire. Respondent was represented by Assistant Attorney General Benjamin Limbaugh of the South Carolina Attorney General's Office.

Before this court were the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the record on appeal, Applicant's appellate records, the State's return, and Applicant's PCR application.

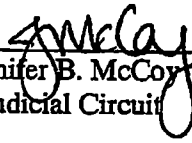
By written order dated April 30, 2019, this court determined that the Applicant failed to prove he is entitled to post-conviction relief based on his allegation of ineffective assistance of counsel, among other claims. After hearing all of the testimony presented at the evidentiary hearing, as well as arguments from both parties, this court denied and dismissed Appellant's application with prejudice. The Applicant filed a Motion to Alter or Amend pursuant to Rule 59(e) SCRCF on May 21, 2019.

JBH/1

After considering the record in this matter, the arguments of counsel, and the applicable legal authorities, this court respectfully **DENIES** the Applicant's Motion to Alter or Amend and reaffirms its decision in the Order of April 30, 2019.

IT IS, THEREFORE, ORDERED that the Applicant's Motion to Alter or Amend the court's April 30, 2019 Order is hereby denied.

July 23, 2019 _____
Charleston, South Carolina



Honorable Jennifer B. McCoy
Judge, Ninth Judicial Circuit

ERC/0312121
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015-039447

ARREST WARRANT NUMBER

2015A1010205608

DATE OF ARREST

12/17/2015

TRUE BILL

Chas. J. [Signature] AUG 09 2016
Foreperson of Grand Jury Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-10-04915

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

AUGUST TERM 2016

THE STATE

VS.

SHELDON LAMARC HUGER

B/M DOB: [REDACTED]

Indictment for

ENTERING A BANK WITH INTENT TO
STEAL

SC Code: § 16-11-0380(A)
CDR Code: 0257

FILED

8/17/2016 9:11:50 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened August 2016, the Grand Jurors of Charleston County present upon their oath:

ENTERING A BANK WITH INTENT TO STEAL

That in Charleston County, South Carolina, on or about December 16, 2015, the Defendant, Sheldon Lamarc Huger, unlawfully did enter a building or part of a building occupied as a bank, depository, or building and loan association with the intent to steal money, securities for money, or property, either by force, intimidation, or threats; all in violation of Section 16-11-380(A), SC Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



EDWARD R. CORVEY, III
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

SHELDON LAMARC HUGERAKA: Sheldon L. HugerRace: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED]SID# SC01474573*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Entering A Bank With Intent To StealIn violation of § 16-11-0380(A) of the S.C. Code of Laws, bearing CDR Code # 0257☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS☐ Mandatory GPS
(CSC w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☒ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Edward R. Corvey, III, Assistant Solicitor SC Bar # 101454

Defendant

Sheldon Huger, Attorney for Defendant SC Bar # 4581

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years. and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 413 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 61.6 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§30-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$100

\$100

\$12

\$25

\$500

\$25

\$150

\$50

\$40/ea

\$

\$

\$

\$

\$100.00

\$

\$

\$

\$

\$25.00

\$

\$

\$

\$3.75

\$

\$128.75

Clerk of Court/Deputy Clerk:

Court Reporter:

Presiding Judge:

Judge Code:

Sentence Date: